

**NOTE:** The rationale sections of these rules have been filed with the Office of Administrative Law, but are not reprinted in the Chapter. The rationale sections can be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, PO Box 301, Trenton, New Jersey 08625-0301.

Chapter 7E  
Coastal Zone Management rules  
N.J.A.C. 7:7E

**SUBCHAPTER 1. INTRODUCTION**

**7:7E-1.1 Purpose and scope**

(a) This chapter presents the substantive rules of the Department of Environmental Protection regarding the use and development of coastal resources, to be used primarily by the Land Use Regulation Program in the Department in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq. (as amended to July 19, 1993), Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., Waterfront Development Law, N.J.S.A. 12:5-3, Water Quality Certification (401 of the Federal Clean Water Act), and Federal Consistency Determinations (307 of the Federal Coastal Zone Management Act). Requests for Water Quality Certification shall also be reviewed in accordance with other applicable statutes and regulations administered by the Department including the Surface Water Quality Standards, N.J.A.C. 7:9B. The rules also provide a basis for recommendations by the Program to the Tidelands Resource Council on applications for riparian grants, leases and licenses.

(b) In 1977, the Commissioner of the Department of Environmental Protection submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey-CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Management Strategy for public review as the New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final Environmental Impact Statement (EIS) for Federal approval. In August 1978 the Governor submitted the revised New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final EIS for Federal approval, which was received in September 1978. In May 1980, the Department submitted further revisions, published as the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement for Federal approval, which was received in September 1980. The Coastal Zone Management rules (Rules) constitute the substantive core of the program.

(c) By revising and readopting these policies as administrative rules, according to the Administrative Procedure Act, the Department aims to increase the predictability of the Department's coastal decision-making by limiting administrative discretion, as well as to ensure the enforceability of the Coastal Zone Management rules of the coastal management program of the State of New Jersey prepared under the Federal Coastal Zone Management Act. Further, the Department interprets the "public health, safety and welfare" clause in CAFRA (N.J.S.A. 13:19-10f) and the Wetlands Act of 1970 (N.J.S.A.

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13:19A-4d) to include a full consideration of the national interests in the wise use of coastal resources.

(d) The coastal land and water areas of New Jersey are diverse. The same development placed in different locations will have different impacts on the coastal ecosystem and built environment as well as different social and economic implications. Decisions on uses of coastal resources shall be made using the three step process consisting of the Location Rules (subchapters 2 through 6), the Use Rules (subchapter 7), and the Resource Rules (subchapter 8) of this chapter. Depending upon the proposed use, project design, location, and surrounding region, different specific rules in each of the three steps may be applicable in the coastal decision-making process. The Coastal Zone Management rules address a wide range of land and water types (locations), present and potential land and water uses, and natural, cultural, social and economic resources in the coastal zone. The Department does not, however, expect each proposed use of coastal resources to involve all Location Rules, Use Rules, and Resource Rules. Rather, the applicable rules are expected to vary from proposal to proposal. Decisions on the use of coastal resources in the Hackensack Meadowlands District will be made by the New Jersey Meadowlands Commission, as lead agency, and by the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.

#### **7:7E-1.2 Jurisdiction**

(a) General: This chapter shall apply to six categories, as defined in N.J.A.C. 7:7E-1.2(c) through (h), of actions or decisions by the Department on uses of coastal resources within or affecting the coastal zone:

1. Coastal Permits;
2. Program Management Actions;
3. Consistency Determinations;
4. Financial assistance;
5. Department management actions affecting the coastal zone; and
6. Department planning actions affecting the coastal zone.

(b) Geographic scope of the New Jersey coastal zone: This chapter shall apply geographically to the New Jersey coastal zone, which is defined as:

1. The coastal area defined in the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.;
2. Coastal waters, which are any tidal waters of the State and all lands lying thereunder. Coastal waters of the State of New Jersey extend from the mean high water line out to the three geographical mile limit of the New Jersey territorial sea, and elsewhere to the interstate boundaries of the States of New York, and Delaware and the Commonwealth of Pennsylvania ;
3. All lands outside of the coastal area as defined by CAFRA extending from the mean high water line of a tidal water body to the first paved public road, railroad or surveyable property line existing on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line;

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4. All areas containing tidal wetlands; and
5. The Hackensack Meadowlands District as defined by N.J.S.A. 13:17-4.

(c) Coastal Permits: This chapter shall apply to all:

1. Waterfront Development permits (N.J.S.A. 12:5-3);
2. Tidal wetlands permits (N.J.S.A. 13:9A-1 et seq.); and
3. CAFRA permits (N.J.S.A. 13:19-1 et seq.).

(d) Program management actions: This chapter shall apply to all actions of the Land Use Regulation Program within the coastal zone to the extent statutorily permissible:

1. Permits for use of a floodway (N.J.S.A. 58:16A-50 et seq.);
2. Promulgation of regulations concerning land use in flood hazard areas (N.J.S.A. 58:16A-50 et seq.);
3. Certification pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq. (Water Quality Certification); and
4. Permits for activities regulated pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.).

(e) Consistency determinations: This chapter shall apply to decisions on the consistency or compatibility of proposed actions by Federal, State, and local agencies within or affecting the coastal zone, including, but not limited to, determinations of Federal consistency under Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., determinations of consistency or compatibility under the Coastal Zone Management Act, comments on Draft and Final Environmental Impact Statements prepared under the National Environmental Policy Act, 42 U.S.C. 4321 et seq., and comments on other public and private plans, programs, projects and policies.

(f) Financial assistance decisions: This chapter shall apply to State aid financial assistance decisions by the Department under the Shore Protection Program and Green Acres Program within the coastal zone, to the extent permissible under existing statutes and regulations.

(g) Department management activities: In addition to the management activities noted at N.J.A.C. 7:7E-1.1, this chapter shall apply, to the extent statutorily permissible, to the following Department management actions including permit decisions, approvals, certifications and conveyances, in or affecting the coastal zone:

1. Tidelands Resource Council: Conveyances of State owned tidelands (N.J.S.A. 12:3-1 et seq.);
2. Division of Water Quality:
  - i. Point source discharges under the New Jersey Pollutant Discharge Elimination System (N.J.S.A. 58:10A-1 et seq.);
  - ii. Wastewater treatment works, sewage collection systems, and outfall sewers (N.J.S.A. 5:10A-6);
  - iii. Wastewater Treatment Construction Grants (N.J.S.A. 26:2E-1 et seq., P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.);
  - iv. Sewerage connection ban exemptions (N.J.S.A. 58:10A-4);

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- v. Designation of Critical Sewerage Areas (N.J.S.A. 58:11-44);
- vi. Fifty or more Sewerage (septic) Facilities (N.J.S.A. 58:11-23); and
- vii. Sewerage Facilities in Critical Areas (N.J.S.A. 58:11-45).
- 3. Land Use Regulation Program:
  - i. Activities within Freshwater Wetlands (N.J.S.A. 13:9B-1 et seq.); and
  - ii. Activities under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.);
- 4. Water Supply Administration:
  - i. Diversion of surface and/or subsurface or percolating waters for public and private water supply (N.J.S.A. 58:1A et seq.);
  - ii. Diversions for water supply (N.J.S.A. 58:1A et seq.);
  - iii. Drilling of wells (N.J.S.A. 58:4A-14);
  - iv. Construction of new or modified public water supply sources, treatment plants, and distribution systems (N.J.S.A. 58:12A-1 et seq.); and
  - v. Installation of or maintenance of a physical connection between an approved public potable water supply and an unapproved supply (N.J.S.A. 58:11-9.1 to 9.11 and 58:12A-1 et seq.);
- 5. Bureau of Non-Point Pollution Control: Discharge of stormwater to surface waters for industrial and other facilities (N.J.S.A. 58:10A-1 et seq.);
- 6. Air Quality Regulation:
  - i. Construction, installation or alteration of control apparatus or equipment (N.J.S.A. 26:2C-9.2);
  - ii. Operation of control apparatus or equipment (N.J.S.A. 26:2C-9.2); and
  - iii. Variances to exceed air quality standards (N.J.S.A. 26:2C-9.2);
- 7. Division of Solid and Hazardous Waste Management of Solid Waste facilities (N.J.S.A. 13:1E-1 et seq.);
- 8. Green Acres and Division of Parks and Forestry:
  - i. Regulations concerning use of State-owned lands (N.J.S.A. 13:1L-19);
  - ii. Designation of State-owned lands for inclusion in the Natural Area system (N.J.S.A. 13:1B-15.12a et seq.);
  - iii. Allocations of Green Acres Grants (N.J.S.A. 13:8A-19 et seq.); and
  - iv. Inclusion of river areas in the Wild and Scenic Rivers System (N.J.S.A. 13:8-45 et seq.).
- 9. Division of Fish and Wildlife: Regulations concerning use of land and water areas under the control of the Division (N.J.S.A. 13:1B-30 et seq., 23:1-1 et seq., 23:4-28);
- 10. Natural and Historic Resources, Engineering and Construction: Management of dams (N.J.S.A. 58:4-1); and
- 11. All Divisions: Management of State-owned lands by the Department.

(h) Department planning actions: This chapter shall provide the basic policy direction for the following planning actions undertaken by the Department in the coastal zone as the lead state agency for Coastal Management under Section 306 of the Federal Coastal Zone Management Act.

- 1. Land Use Regulation Program:
  - i. Coastal zone management;
- 2. Natural and Historic Resources Programs:
  - i. Navigational dredging; and

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ii. Shore protection.

3. Division of Watershed Management:

i. Areawide water quality management ("208");

ii. Allocation of planning grants for the development of local stormwater management ordinances (P.L. 1981, c.32, and N.J.S.A. 40:55D-1 et seq.)

4. Air Quality Regulation: Air quality planning.

5. Division of Solid and Hazardous Waste: Solid and hazardous waste management.

6. Green Acres and Division of Parks and Forestry: Planning for public acquisition of coastal lands.

7. Division of Water Quality: Issuance of environmental decision documents for environmental infrastructure facilities that receive State financial assistance ( P.L. 1985, c.329, N.J.A.C. 7:22-10)

8. Office of Policy, Planning and Science: Implementation and coordination of the Federal Coastal Zone Management Program.

### **7:7E-1.3 Severability**

If any provision of this chapter or the application of this chapter to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

### **7:7E-1.4 Review, revision, and expiration**

The Department shall periodically review this chapter, consider the various national, State, and local interests in coastal resources and developments seeking coastal locations, and propose and adopt appropriate revisions to this chapter. Under the requirements of the Federal Coastal Zone Management Act, the Department expects to conduct an annual review of the rules and expects to revise, amend or readopt the rules before the five-year deadline under Executive Order No. 66 of 1978 for periodic review of administrative rules.

### **7:7E-1.5 Coastal decision-making process**

(a) The Coastal Zone Management rules represent the consideration of various conflicting, competing, and contradictory local, State, and national interests in diverse coastal resources and in diverse uses of coastal locations. Numerous balances have been struck among these interests in defining these rules, which reduce but do not presume to eliminate all conflicts among competing interests. One reason for this intentional balancing and conflict reducing approach is that coastal management involves explicit consideration of a broad range of concerns, in contrast to other resource management programs which have a more limited scope of concern. Decision-making on individual proposed actions using the Coastal Zone Management rules must therefore consider all three steps in the process, and weigh, evaluate, and interpret inevitably complex interests, using the framework established by the rules. In this process, interpretations of terms, such as "prudent," "feasible," "minimal," "practicable," and "maximum extent," as used in a specific rule or combinations of the rules may vary, depending upon the context of the proposed use, location, and design. Finally, these principles should not be understood as authorizing arbitrary decision-making or unrestrained administrative discretion.

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Rather, the limited flexibility intentionally built into the Coastal Zone Management rules provides a mechanism for incorporating professional judgment by the Department officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process.

1. In the application of administrative discretion, the Department officials will be guided by eight basic coastal policies which summarize the direction of the specific rules.

i. Protect and enhance the coastal ecosystem.

ii. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development, encourage the preservation of open space, and ensure the availability of suitable waterfront areas for water dependent activities.

iii. Employ a method for decision making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development.

iv. Protect the health, safety and welfare of people who reside, work and visit the coastal zone.

v. Promote public access to the waterfront through protection and creation of meaningful access points and linear walkways and at least one waterfront park in each waterfront municipality.

vi. Maintain active port and industrial facilities, and provide for necessary expansion in adjacent sites.

vii. Maintain and upgrade existing energy facilities, and site additional energy facilities in a manner consistent with the rules of this Coastal Management Program.

viii. Encourage residential, commercial, and recreational mixed-use redevelopment of the developed waterfront.

### **7:7E-1.6 Mitigation**

(a) Mitigation shall be selectively considered on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. In general, mitigation should be similar in type and location to the resource disturbed, destroyed, that is, replacement in kind within the same watershed. The Department will, however, consider proposals for mitigation that differ in type and/or location from the disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting the Basic Location Policies (N.J.A.C. 7:7E-1.5(b)1). Requirements for mitigation of a particular resource are addressed more specifically in each applicable Special Area Rules (N.J.A.C. 7:7E-3.1 through 3.49).

(b) Rationale: See the note at the beginning of this Chapter.

### **7:7E-1.7 Correspondence with the Department**

Correspondence related to this chapter may be submitted to the Department at the following address:

Land Use Regulation Program  
New Jersey Department of Environmental Protection  
501 E. State Street

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PO Box 439

Trenton, New Jersey 08625-0439

## **7:7E-1.8 Definitions**

(a) The Coastal Zone Management rules are stated in terms of actions that are encouraged, required, acceptable, conditionally acceptable, discouraged, or prohibited. Some rules include specific conditions that must be met in order for an action to be deemed acceptable. Within the context of the Coastal Zone Management rules and the principles defined in N.J.A.C. 7:7E-1.5(a), the following words have the following meanings.

"Acceptable" means that a proposed use of coastal resources is likely to be approved.

"Action", "activity", "project", "proposal", or "use" are used interchangeably to describe the proposed use of coastal resources that is under scrutiny using the Coastal Zone Management rules.

"Area": See definition for "site" below.

"Bulkhead" means a vertical shore protection structure installed to withstand the forces of waves and currents. A bulkhead is not a "revetment" or a "gabion" as defined elsewhere in this section.

"CAFRA area" means the "coastal area" defined in the Coastal Area Facility Review Act at N.J.S.A. 13:19-4.

"Coastal permit" or "permit" means a permit issued by the Department under N.J.A.C. 7:7 pursuant to any of the following statutes: the Waterfront Development Law, N.J.S.A. 12:5-3, the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., or the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.

"Commercial development" means a development designed, constructed or intended to accommodate commercial, retail or office uses. "Commercial development" shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food or other merchandise, or any establishment used for providing professional, financial or other commercial services.

"Conditionally acceptable" means that a proposed use of coastal resources is likely to be acceptable, provided that conditions specified in the rules are satisfied.

"Conservation restriction" means a restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural state, scenic or open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or as suitable habitat for fish or wildlife, to forbid or limit any or all of the following:

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1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;
2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs or other vegetation;
4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;
5. Surface use except for the purposes permitting the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; and
7. Other acts or uses detrimental to the retention of land or water areas according to the purposes of this chapter.

"Development" means any activity for which a Wetlands Act of 1970 Permit, Waterfront Development Permit, or Federal consistency determination is required, including site preparation and clearing. Development, for an application under the CAFRA, means the construction, relocation, or enlargement of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development and public development. Development under CAFRA and the Waterfront Development Law does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with enlargements which are not exempt under CAFRA pursuant to N.J.A.C. 7:7-2.1(c)4 or the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d). Development under CAFRA does not include debris removal or cleanup provided such activities do not involve excavation, grading, or filling on beaches and dunes.

"Discouraged" means that a proposed use of coastal resources is likely to be rejected or denied as the Department has determined that such uses of coastal resources should be deterred. In cases where the Department considers the proposed use to be in the public interest despite its discouraged status, the Department may permit the use provided that mitigating or compensating measures can be taken so that there is a net gain in quality and quantity of the coastal resource of concern.

"Dwelling unit" means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a patient/client room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home or any habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

"11-digit hydrologic unit code area" means an area within which water drains to a particular receiving surface water body, which area is identified by an 11-digit hydrologic unit boundary designation, as shown on the map included in the United States Geological Survey, Water Resources Investigations Report 95-4134, 1995, entitled "Development of



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a 14-digit Hydrologic Coding Scheme and Boundary Data Set for New Jersey.” The HUC codes for New Jersey can be downloaded from [www.njgeodata.state.nj.us](http://www.njgeodata.state.nj.us). The HUC 11 data is entitled “subwatersheds.” Software designed for use with Geographic Information Systems (GIS) will be required to view that downloaded data.

"Encouraged" means that a proposed use of coastal resources is acceptable and is a use, by its purpose, location, design, and effect, that the Department has determined should be fostered and supported in the coastal zone.

“Gabion” means a shore protection structure that is comprised of wire mesh basket(s) or mattress(es) filled with rock and used in multiples as a structural unit installed to withstand the forces of waves and currents. A gabion is not a “bulkhead” or a “revetment” as defined elsewhere in this section.

"Habitable structure" means a structure that is able to receive a certificate of occupancy from the municipal construction code official, or can be demonstrated to have been legally occupied as a dwelling unit for the most recent five years.

"Impervious cover" means any structure, surface, or improvement that reduces and/or prevents absorption of stormwater into land. Porous paving, paver blocks, gravel, crushed stone, crushed shell, elevated structures (including boardwalks), and other similar structures, surfaces, or improvements are considered impervious cover. Grass, lawns, or any other vegetation are not considered impervious cover.

"Linear development" means a development with the basic function of connecting two points, such as a road, drive, public walkway, railroad, sewerage pipe, stormwater management pipe, gas pipeline, water pipeline, or electric, telephone or other transmission line.

"Location": See definition for "site" below.

"Major commercial development" means a commercial development with a cumulative building area of greater than 100,000 square feet.

"Mean high water" (MHW) is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey coast, the two high waters of each tidal day are included in the mean. This datum is available from the Department, Bureau of Tidelands Management.

"Mean high water line" (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the oceanfront and the tidal bays and streams in the coastal zone.

1. For practical purposes, the mean high water line is often referred to as the "ordinary" high water line, which is typically identified as the limit of wet sand or debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of

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establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Law, the surveyed mean high water elevation will be used.

"Minor commercial development" means a commercial development with a cumulative building area of 100,000 square feet or less.

"Navigable" means deep enough and wide enough to afford passage to watercraft, including canoes, at high tide. Navigability will also apply to areas upstream of obstructions (for example, culverts), provided that the water course is still tidally influenced in the upstream area.

"Program" means the Department of Environmental Protection's Land Use Regulation Program.

"Prohibited" means that a proposed use of coastal resources is unacceptable and that the Department will use its legal authority to reject or deny the proposal.

"Reconstruction" means the repair or replacement of a building, structure or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the area covered by buildings and/or asphalt or concrete pavement and does not result in a change in the use of the development. Reconstruction of docks and piers means repair or replacement in the same location and size of the preexisting structure. Reconstruction does not include repairs or maintenance, such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with enlargements which are not exempt pursuant to N.J.A.C. 7:7-2.1(c)4.

"Revetment" means a sloped shore protection structure consisting of a facing made of stone, placed on a bank, bluff, or shoreline to withstand the forces of waves and currents. A revetment is not a "gabion" or "bulkhead" as defined elsewhere in this section.

"Site" means the lot or lots upon which a proposed development is to be constructed.

"Spring tide" means a tide that occurs at or near the time of new and full moon and which rises highest (Spring High Tide) and falls lowest (Spring Low Tide) from the mean level.

"Spring high water line" is the intersection of the land with the water surface at the elevation of spring high tide.

"Water dependent" means development that cannot physically function without direct access to the body of water along which it is proposed. Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location. Maritime activity, commercial fishing, public waterfront recreation and marinas are examples of

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water dependent uses, but only the portion of the development requiring direct access to the water is water dependent. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use will not be considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation, a dock or quay and associated unloading area would be water dependent, but an associated warehouse would not be water dependent.

1. Examples of water dependent uses include: docks, piers, marina activities requiring access to the water, such as commissioning and decommissioning new and used boats, boat repairs and short term parking for boaters, storage for boats which are too large to be feasibly transported by car trailer (generally greater than 24 feet), rack systems for boat storage, industries such as fish processing plants and other commercial fishing operations, port activities requiring the loading and unloading of vessels, and water-oriented recreation.

2. Water dependent uses exclude, for example: housing, hotels, motels, restaurants, warehouses, manufacturing facilities (except for those which receive and quickly process raw materials by ship), dry boat storage for boats that can be transported by car trailer, long-term parking, parking for persons not participating in a water-dependent activity, boat sales, automobile junk yards, and non-water oriented recreation such as roller rinks and racquetball courts.

"Water oriented" means development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed. (Industrial uses need not serve the general public.) A hotel or restaurant, since it serves the public, could be water-oriented if it takes full advantage of a waterfront location. An assembly plant could be water oriented if overland transportation is possible but water-borne receipt of raw materials and shipment of finished products is economically advantageous. Housing is not water-oriented despite the economic premium placed on waterfront housing, because it only benefits those who can afford to buy or rent the housing units.

"Watershed management area" means an aggregation of the 11-digit hydrologic unit codes designated by the Department as a watershed management area and shown on the map entitled "New Jersey's Watersheds, Watershed Management Areas, and Water Regions," dated April 2000, as amended and supplemented. The map of watershed management areas may be obtained from the Department's Division of Watershed Management at (609) 984-0058, or may be viewed on the internet at [www.state.nj.us/dep/gis](http://www.state.nj.us/dep/gis).

## **SUBCHAPTER 2. (RESERVED)**

## **SUBCHAPTER 3. SPECIAL AREAS**

### **7:7E-3.1 Purpose and scope**

(a) Special Areas are areas that are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning requirements, as to merit

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focused attention and special management rules. This subchapter divides Special Areas into four categories:

1. Special Water Areas, N.J.A.C. 7:7E-3.2 through 3.15, extend landward to the spring high water line or the level of normal flow in non-tidal waters;
2. Special Water's Edge Areas, N.J.A.C. 7:7E-3.16 through 3.32, are divided into three subcategories depending on their location. Special Water's Edge Areas in (a)2i and ii below are found only next to tidal waters, while Coastwide Special Water's Edge Areas are found adjacent to tidal as well as non-tidal waters;
  - i. Oceanfront, and Raritan and Delaware Bayfronts, N.J.A.C. 7:7E-3.16 through 3.19;
  - ii. Barrier and Bay Islands, N.J.A.C. 7:7E-3.20 and 7:7E-3.21; and
  - iii. Coastwide Special Water's Edge Areas, N.J.A.C. 7:7E-3.22 through 3.32;
3. Special Land Areas, N.J.A.C. 7:7E-3.33 through 3.35, generally are landward of the Special Water's Edge Areas; and
4. Coastwide Special Areas, N.J.A.C. 7:7E-3.36 through 3.49, may include Special Water Areas, Special Water's Edge Areas or Special Land Areas.

(b) All land or water areas, except certain Special Water's Edge Areas, are subject to either the General Land Area rules at N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B or the General Water Area rules at N.J.A.C. 7:7E-4. In addition, certain land or water areas are subject to one or more Special Area rules. All Special Water's Edge Areas are subject to one or more Special Area rules. In some cases, a portion of a site is subject to both General Area rules and Special Area rules. Where the applicable General Area rules and Special Area rules conflict, the Special Area rules shall govern.

### **7:7E-3.2 Shellfish habitat**

(a) Shellfish habitat is defined as an estuarine bay or river bottom which has a history of production for hard clams (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), eastern oysters (*Crassostrea virginica*), bay scallops (*Argopecten irradians*), or blue mussels (*Mytilus edulis*), or otherwise listed below in this section. A shellfish habitat areas is defined as an area which meets one or more of the following criteria:

1. The area has a current shellfish density equal to or greater than 0.20 shellfish per square foot;
2. The area has a history of natural shellfish production according to data available to the New Jersey Bureau of Shellfisheries, or is depicted as having high or moderate commercial value in the Distribution of Shellfish Resources in Relation to the New Jersey Intracoastal Waterway (US Department of the Interior, 1963), "Inventory of New Jersey's Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1983-present); and/or the "Intentory of Delaware Bays and Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1993);
3. The area is designated by the State of New Jersey as a shellfish culture areas as authorized by N.J.S.A. 50:1 et seq. Shellfish culture areas include estuarine areas presently leased by the State for shellfish aquaculture activities or hard clam relay, transplant and transfer as well as those areas suitable for future shellfish aquaculture development; or
4. The area is designated as productive at N.J.A.C. 7:25-24, Leasing of Atlantic and

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Delaware Bay Bottom for Aquaculture.

(b) Any area determined by the Department to be contaminated by toxins is excluded from this definition. The Final Short List, prepared by the Department pursuant to the Federal Clean Water Act 33 U.S.C. 1313(c)(1), identifies these known contaminated areas. Also excluded from this definition are those sites for which the Department is presented with clear and convincing evidence that the sites lack the physical features necessary for the support of a shellfish population, excluding those waterways listed at N.J.A.C. 7:7E-7.3(d)10 and (j) below.

(c) The water located under any boat mooring facility (including docks and associated structures) is automatically condemned and reduced to "prohibited" status pursuant to N.J.A.C. 7:12-2.1(a)1ii. Development which would result in the destruction, condemnation (downgrading of the shellfish growing water classification) or contamination of shellfish habitat is prohibited, unless the proposed development is a dock, pier, or boat mooring constructed in accordance with (d)3 below.

1. The term "destruction" includes actions of filling to create fast land, overboard dumping or disposal of solids or spoils which would smother shellfish populations, or create unsuitable conditions for shellfish colonization or the creation of bottom depressions with anoxic conditions.

(d) Construction of a dock, pier or boat moorings in shellfish habitat is prohibited, except for the following:

1. Public fishing piers owned and controlled by a public agency for the sole purpose of providing access for fishing;

2. In waters which have been classified as prohibited for the purpose of harvesting shellfish; and

3. A single noncommercial dock, pier, or boat mooring associated with a single family dwelling provided the proposed dock, pier, or boat mooring meets the requirements at (d)3i through v below. If a lot has frontage on both a natural waterway and a man-made lagoon, as defined at N.J.A.C. 7:7-1.3, the dock, pier, or boat mooring shall be located within the lagoon, unless locating the dock, pier or boat mooring on the lagoon would not otherwise comply with the Recreational docks and piers rule at N.J.A.C. 7:7E-4.5 or any other provisions of this chapter.

i. The proposed dock, pier or boat mooring is:

(1) Constructed of non-polluting or other inert material, such as natural lumber or other untreated wood, concrete, plastic or vinyl; and

(2) Designed and constructed in a manner that reduces the size of the structure to limit the area of shellfish habitat condemned and reduces adverse impacts to the marine ecosystem to the extent practicable. Reduction of the area of shellfish habitat condemned and adverse impacts to the marine ecosystem may include, for example, adjustment of the dimensions and location of the proposed dock, pier, or boat mooring to reduce the total area covered by the structure while ensuring that the requirements of this chapter are met.

ii. Unless the Department determines that a different length dock or pier is appropriate in order to ensure that the requirements of this chapter are met, the dock or pier shall not extend beyond, and a boat mooring shall not be located beyond, a straight

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line drawn between the outermost end of decking of the nearest adjacent existing legal dock or pier to each side of the dock, pier or boat mooring, except:

(1) If the dock, pier or boat mooring is associated with a lot that has frontage on both a man-made lagoon and a natural waterway and the dock, pier or boat mooring is to be located on the natural waterway as required under (d)3 above, the dock or pier shall not extend beyond, or the boat mooring shall not extend beyond, the outermost end of decking of the nearest adjacent dock or pier on the natural waterway; or

(2) To meet the requirements of the submerged vegetation habitat rule at N.J.A.C. 7:7E-3.6, a dock or pier shall be extended to the minimum length necessary, or the boat mooring shall be located where necessary to ensure that at mean low water a minimum water depth of four feet is present in the designated slips of the dock, pier or boat mooring;

iii. The dock, pier or boat mooring shall have no more than two designated slips. Boats shall not be moored at any area other than the two boat slips designated in the Department permit and/or the plan approved under that permit;

iv. Only one dock, pier or boat mooring shall be constructed per buildable single family lot pursuant to this subsection. Where two or more lots have been assembled for the purpose of building a single family dwelling, only one dock, pier or boat mooring shall be constructed pursuant to this subsection;

v. No dredging shall be performed in conjunction with the construction or use of the dock, pier, or boat mooring; and vi. Mitigation shall be performed in accordance with the following:

(1) A conservation restriction shall be placed on the subject property governing the construction or reconstruction of a shoreline protection structure, as follows:

(A) If the dock, pier or boat mooring is associated with an unbulkheaded shoreline, the conservation restriction shall prohibit the construction of a shoreline protection structure other than stone rip-rap or other similar sloped revetment; or

(B) If the dock, pier or boat mooring is associated with a previously bulkheaded shoreline, the conservation restriction shall prohibit replacement, reconstruction or rehabilitation of the bulkhead with anything other than non-polluting or other inert material; and

(2) A monetary contribution shall be provided to the Department's dedicated account for Shellfish Habitat Mitigation. The amount of each monetary contribution provided under this section shall be based upon the areas of shellfish habitat condemned due to coverage by the structure and boat moorings, the documented shellfish density on the property, and the commercial value of the shellfish resource.

(e) New dredging (defined at N.J.A.C. 7:7E-4.7) within shellfish habitat is prohibited, except when it is necessary to maintain the use of public launching facilities (ramps) with 25 or more trailer parking spaces or marina facilities with 25 or more dockage units, consisting of either dry dock storage or wet slips. New dredging for existing marinas or for the expansion of such facilities is conditionally acceptable provided that:

1. The expanded portion of the marina, other than the access channel, will not be located within the shellfish habitat;

2. The marina provides on site restrooms, a marine sanitation disposal device and pumpout station; and

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3. The width, depth and length of the to-be dredged channel and boat basin are limited to the minimum dimensions needed to service the existing or expanded facilities.

(f) Maintenance dredging (defined at N.J.A.C. 7:7E-4.6) within shellfish habitat is conditionally acceptable, provided the disturbance to shellfish habitat is minimized to the greatest extent possible.

(g) New dredging adjacent to shellfish habitat is discouraged in general, but may be conditionally acceptable if it can be demonstrated that the proposed dredging activities will not adversely affect shellfish habitat, population or harvest. If the Department determines dredging to be acceptable, dredging shall be managed pursuant to N.J.A.C. 7:7E-4.7 so as not to cause significant mortality of the shellfish due to increased turbidity and sedimentation, resuspension of toxic chemicals, or any other occurrence which will interfere with the natural functioning of the shellfish habitat.

(h) For the purpose of this rule all docks and piers, except public fishing piers defined in (d)1 above, are considered boat mooring facilities.

(i) Development required for national security for which there exists no other prudent and feasible alternative site is acceptable under this rule, provided that the shellfish resource is salvaged and mitigated pursuant to a plan approved in writing by the Department. The applicant is responsible for all the expenses of resource salvaging and mitigation. All such programs shall be coordinated with the appropriate shellfish management agency.

(j) N.J.A.C. 7:7E-7.3(d)10 shall also apply to development of boat mooring facilities of five or more slips on the Navesink, Shrewsbury, and Manasquan Rivers and St. George's Thorofare.

(k) Rationale: See the note at the beginning of this subchapter.

### **7:7E-3.3 Surf clam areas**

(a) Surf clam areas are coastal waters which can be demonstrated to support significant commercially harvestable quantities of surf clams (*Spisula solidissima*), or areas important for recruitment of surf clam stocks. This includes areas where fishing is prohibited for research sanctuary or conservation purposes by N.J.A.C. 7:25-12.1(d)4. Surf clams are a marine fish and therefore are also subject to the marine fish and fisheries rule, N.J.A.C. 7:7E-8.2.

(b) Development which would result in the destruction, condemnation, or contamination of surf clam areas is prohibited except for the following:

1. Development that is of national interest provided:
  - i. There are no prudent and feasible alternative sites; and
  - i. Impacts to the surf clam area are minimized.
2. Sand and gravel mining to obtain material for beach nourishment provided:
  - i. The beach nourishment project is in the public interest;

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- ii. There are no prudent and feasible alternative offshore borrow site that would result in less impact to marine fish and fisheries;
  - iii. The impacts to surf clam areas are minimized through the following:
    - (1) The beach nourishment project is designed to minimize the volume of sand borrowed from the surf clam area;
    - (2) The borrow cut is designed to minimize the area disturbed, for example, by designing a deeper cut;
    - (3) The borrow site is located to avoid those more productive surf clam areas; and
    - (4) When appropriate, notice shall be provided to clambers in advance of the mining operation to allow for surf clam harvest; and
  - iv. The sand mining is not located within a surf clam conservation area as defined at N.J.A.C. 7:25-12.
- (c) Rationale: See note at the beginning of this subchapter.

#### **7:7E-3.4 Prime fishing areas**

(a) Prime fishing areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity. The area includes all coastal jetties and groins, public fishing piers or docks and artificial reefs. Prime fishing areas also include all red line delineated features within the coastal waters illustrated in: B.L. Freeman and L.A. Walford (1974) Angler's Guide to the United States Atlantic Coast Fish; Fishing Grounds and Fishing Facilities, Section III and IV or as indicated on New Jersey's Specific Sport and Commercial Fishing Grounds Chart (page 14) contained in "New Jersey's Recreational and Commercial Ocean Fishing Grounds." Long and Figley (1984); recently developed artificial reefs off the New Jersey coast as identified in Figley (1989) "A Guide to Fishing and Diving New Jersey's Artificial Reefs", and The Fishing Grounds of Raritan, Sandy Hook and Delaware Bays as determined in Figley and McCloy (1988) "New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay". While this information source applies only to the Delaware and Raritan Bay and Atlantic Ocean shorefronts, Prime Fishing Areas do occur throughout the coastal zone.

(b) Standards relevant to prime fishing areas are as follows:

1. Permissible uses of prime fishing areas include recreational and commercial finfishing and shellfishing, as presently regulated by the Department's Division of Fish and Wildlife, scuba diving and other water related recreational activities.
2. Prohibited uses include sand or gravel submarine mining which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas. Disposal of domestic or industrial wastes must meet applicable State and Federal effluent limitations and water quality standards.

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-3.5 Finfish migratory pathways**



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(a) Finfish migratory pathways are waterways (rivers, streams, creeks, bays and inlets) which can be determined to serve as passageways for diadromous fish to or from seasonal spawning areas, including juvenile anadromous fish which migrate in autumn and those listed by H.E. Zich (1977) "New Jersey Anadromous Fish Inventory" NJDEP Miscellaneous Report No. 41, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary.

1. Species of concern include: alewife or river herring (*Alosa pseudoharengus*), blueback herring (*Alosa sapidissima*), American shad (*Alosa aspidissima*), striped bass (*Monroe saxatilis*), Atlantic sturgeon (*Acipenser oxyrinchus*), Shortnose sturgeon (*Acipenser brevirostrum*) and American eel (*Anguilla rostrata*).

(b) Development, such as dams, dikes, spillways, channelization, tide gates and intake pipes, which creates a physical barrier to the movement of fish along finfish migratory pathways is prohibited, unless acceptable mitigating measures such as fish ladders, erosion control, or oxygenation are used.

(c) Development which lowers water quality to such an extent as to interfere with the movement of fish along finfish migratory pathways or to violate State and Delaware River Basin Commission water quality standards is prohibited.

1. Mitigating measures are required for any development which would result in: lowering dissolved oxygen levels, releasing toxic chemicals, raising ambient water temperature, impinging or suffocating fish, entrainment of fish eggs, larvae or juveniles, causing siltation, or raising turbidity levels during migration periods.

(d) Water's edge development which incorporates migration access structures, such as functioning fish ladders, will be conditionally acceptable, provided that the Department's, Division of Fish and Wildlife approves the design of the access structure. As of January, 1994, the Department's Division of Fish and Wildlife is evaluating anadromous fish spawning areas for potential enhancement work. This may include building of fish ladders, removal of obstructions, stocking, and other means. A development proposal shall be consistent with these Department efforts.

(e) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.6 Submerged vegetation habitat**

(a) A Submerged vegetation special area consists of water areas supporting or documented as previously supporting rooted, submerged vascular plants such as widgeon grass (*Ruppia maritima*), sago pondweed (*Potamogeton pectinatus*), horned pondweed (*Zannichellia palustris*) and eelgrass (*Zostera marina*). In New Jersey, submerged vegetation is most prevalent in the shallow portions of the Navesink, Shrewsbury, Manasquan and Metedeconk Rivers, and in Barnegat, Manahawkin and Little Egg Harbor Bays. Other submerged vegetation species in lesser quantities include, but are not limited to, the following: water weed (*Elodea nuttalli*), *Eriocaulon parkeri*, *Liaopsis chinensis*, *Najas flexilis*, *Nuphar variegatum*, *Potamogeton crispus*, *Potamogeton epihydrus*, *Potamogeton perfoliatus*, *Potamogeton pusillus*, *Scirpus subterminalis* and *Vallisneria spiralis*. Detailed maps of the distribution of the above species for New Jersey, and a

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method for delineation, are available from DEP in the New Jersey Submerged Aquatic Vegetation Distribution Atlas (Final Report), February, 1980, conducted by Earth Satellite Corporation and also on "Eelgrass Inventory" maps prepared by the Division of Fish and Wildlife, Bureau of Shellfisheries, 1983. If the Department is presented with clear and convincing evidence that a part of its mapped habitat lacks the physical characteristics necessary for supporting or continuing to support the documented submerged vegetation species, such a site would be excluded from the habitat definition.

(b) Development in submerged vegetation habitat is prohibited except for the following:

1. Trenching for utility pipelines and submarine cables in the public interest, provided there is no practicable or feasible alternative alignment, the impact area is minimized and that, following pipeline or cable installation, the disturbed area is restored to its preconstruction contours and conditions. This may include subsequent monitoring and replanting of the disturbed area if these species have not recolonized the disturbed area within three years. The use of directional drilling techniques for utility installations is strongly encouraged, rather than the use of trenching;

2. New dredging of navigation channels maintained by the State or Federal government provided that there is no practicable or feasible alternative to avoid the vegetation; and that impacts to the habitat area (for example dredging width, length and depth) are minimized to the maximum extent practicable. Mitigation will be required for destruction of one acre or more which possesses submerged aquatic vegetation;

3. Maintenance dredging as defined at N.J.A.C. 7:7E-4.6, of previously authorized, existing navigation channels maintained by the State or Federal government and associated disposal areas provided that there is no practicable or feasible alternative to avoid the vegetation and that impacts to the habitat area are minimized to the maximum extent practicable;

4. New and maintenance dredging as defined at N.J.A.C. 7:7E-4.6 and 4.7, of previously authorized operating marinas and any necessary access channels to the expanded portion of such marinas (this exception does not include the boat basin of the expanded portion of the marina) and existing launching facilities with 25 or more dockage, storage or trailer parking units and their associated access channels, provided the proposed areas to be dredged (such as channel length, depths and widths) are minimized to the maximum extent practicable;

5. Maintenance dredging as defined at N.J.A.C. 7:7E-4.6, to regain access to existing private docks, piers, boat ramps and mooring piles not associated with marinas that were previously dredged to an authorized channel and/or mooring depth, width and length, provided there is no practicable or feasible alternative on site that would avoid dredging in submerged vegetation habitat;

6. Construction of a single noncommercial dock or pier provided that:

- i. There are no practicable or feasible alternatives to avoid impacts to submerged vegetation habitat at the site;

- ii. The width of the structure will not exceed four feet, except for that portion of the structure adjacent to the mooring area, where the width and length may not exceed six and 20 feet, respectively;

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iii. The pier shall have no more than two designated slips. No boats may be moored at a non-designated pier/dock area;

iv. No more than one pier shall be placed for every building lot and each building lot shall have a forty foot or greater frontage on the water. Where more than one lot has been assembled for the purpose of building, only one pier will be allowed;

v. No dredging shall be performed in conjunction with the use of the dock or pier;

vi. A minimum water depth of four feet at mean low water must be present in the area where the boats will be moored; and

vii. There is no alternative mooring area at the site that would have less impact on the submerged aquatic vegetation; and

7. The extension of existing piers or floating docks through submerged vegetation habitat to water at least four feet deep at mean low water, for the purpose of eliminating dredging or boating through submerged vegetation habitat, provided the width of the extended portion of the pier does not exceed four feet (except for the portion of the pier adjacent to the mooring area where the width shall not exceed six feet), there will be no increase in the number of boat moorings, and no dredging will be performed in conjunction with the use of the structure.

(c) Development in upland or water areas adjacent to submerged vegetation habitat or in submerged vegetation habitat which results in erosion or turbidity increases in the waters supporting submerged vegetation or prop or hull scour through use of the development is prohibited unless mitigating measures are provided.

(d) Compensation for unavoidable, permanent significant impacts to submerged vegetation habitats, when required, shall consist of the establishment of self-sustaining habitat for the appropriate species in accordance with scientifically-documented transplanting methods. Monitoring and replanting shall be carried out biannually to demonstrate persistence of the compensatory habitat for a minimum of three years. The following must be documented for any area proposed for seagrass habitat restoration: that the area previously supported seagrass but no longer does; the specific cause(s) of seagrass elimination; and that the specific condition(s) or action(s) responsible for elimination of seagrass has since ceased. Priority will be given to in-kind restoration of seagrass habitat in as close proximity as possible to the impacted site. No compensation credit will be given for attempts to plant seagrass within unvegetated interpatch areas of existing seagrass habitat or for attempts to increase bottom coverage within existing seagrass beds (defined as an area where seagrass rhizomes overlap, or where seagrass shoots intermingle within less than one square meter).

(e) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.7 Navigation channels**

(a) Navigation channels are tidal water areas including the Atlantic Ocean, inlets, bays, rivers and tidal guts with sufficient depth to provide safe navigation. Navigation channels include all areas between the top of the channel slopes on either side. These navigation channels are often marked with buoys or stakes. Major navigation channels are shown on NOAA/National Ocean Service Charts.

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(b) Standards relevant to navigation channels are as follows:

1. Development which would cause terrestrial soil and shoreline erosion and siltation in navigation channels shall utilize appropriate mitigation measures.
2. Development which would result in loss of navigability is prohibited.
3. Any construction which would extend into a navigation channel is prohibited.
4. The placement of structures within 50 feet of any authorized navigation channel is discouraged, unless it can be demonstrated that the proposed structure will not hinder navigation.

(c) Rationale See note at the beginning of this Chapter.

### **7:7E-3.8 Canals**

(a) Canals are navigation channels for boat traffic through land areas which are created by cutting and dredging or other human construction technique sometimes enlarging existing natural surface water channels. The Cape May, Point Pleasant, and Delaware and Raritan Canals are the principal examples in the New Jersey Coastal zone.

(b) In canals presently used for navigation, any use that would interfere with existing or proposed canal boat traffic is prohibited.

(c) In the Delaware and Raritan Canal, and in the surrounding Review Zone established by the Delaware and Raritan Canal Commission, development must be consistent with the rules and regulations of the Review Zone of the Delaware and Raritan Canal State Park (N.J.A.C. 7:45).

(d) Rationale: See note at the beginning of this Chapter.

### **7:7E-3.9 Inlets**

(a) Inlets are natural channels through barrier islands allowing movement of fresh and salt water between the ocean and the back bay system. Inlets naturally have delta fans of sediment seaward and landward, deposited by the ebb and flow of the tide.

1. The seaward limit of an inlet is defined as the seaward extent of the ebb delta fan. The landward limit is defined as the inland extent of the flood delta fan.

2. If there is doubt about the extent of these fans, the applicant shall submit up-to-date bathymetric surveys and Department staff will determine the boundary on a case-by-case basis.

(b) Development in inlets shall comply with the following:

1. Filling is prohibited; and
2. Submerged infrastructure is discouraged.

(c) Rationale: See note at the beginning of this Chapter.

### **7:7E-3.10 Marina moorings**

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(a) Marina moorings are areas of water that provide mooring, docking and boat maneuvering room as well as access to land and navigational channels for five or more recreational boats.

(b) Non-water dependent development in a marina mooring area is prohibited.

(c) Any use that would detract from existing or proposed recreational boating use in marina mooring areas is discouraged.

(d) Rationale: See note at the beginning of this subchapter.

### **7:7E-3.11 Ports**

(a) Ports are water areas having, or lying immediately adjacent to, concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

1. Port locations in New Jersey include, among others, Newark, Elizabeth, Bayonne, Jersey City, Weehawken, Hoboken, Woodbridge, Perth Amboy, Camden, Gloucester City, Paulsboro and Salem.

2. Standards for a docking facility or concentration of docks for a single industrial or manufacturing facility are found at N.J.A.C. 7:7E-4.4, Docks and piers for cargo and commercial fisheries.

(b) Any use which would preempt or interfere with port uses of this water area is prohibited.

(c) Aquaculture and dumping of solid waste or semi-solid waste is prohibited.

(d) Boat ramps for recreational boating are conditionally acceptable provided the ramp complies with all Special Areas Rules (N.J.A.C. 7:7E-3) and provided it does not interfere with the port use.

(e) Docks and piers for cargo movements are encouraged.

(f) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.12 Submerged infrastructure routes**

(a) A submerged infrastructure route is the corridor in which a pipe or cable runs on or below a submerged land surface.

(b) Any activity which would increase the likelihood of infrastructure damage or breakage, or interfere with maintenance operations is prohibited.

(c) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.13 Shipwreck and artificial reef habitats**

(a) The shipwreck and artificial reef habitats special area includes all permanently

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submerged or abandoned remains of vessels, and other structures including but not limited to, artificial reefs, anchors, quarry rocks or lost cargo, which serve as a special marine habitat or are fragile historic and cultural resources. An artificial reef is a man-made imitation of a natural reef created by placing hard structures on the sea floor for the purpose of enhancing fish habitat and fish stock. In time, an artificial reef will attain many of the biological and ecological attributes of a natural reef. Artificial reefs do not include shore protection structures, pipelines and other structures not constructed for the sole purpose of fish habitat.

1. Known sites include those shown either on National Ocean Survey (N.O.S.) Charts listed at N.J.A.C. 7:7E-3.7(a), the navigation channel rule, or listed in the following publications: W. Krotee and R. Krotee, *Shipwrecks Off the New Jersey Coast* (1966), B.L. Freeman and L.A. Walford, *Angler's Guide to the United States Atlantic Coast Fish, Fishing Grounds, and Fishing Facilities* (1974); and, B. Preim, J. Carlson, B. Figley, *A Guide to Fishing and Diving New Jersey Reefs*, (2000). In addition to known sites, unidentified remains of vessels may exist within tidal waters. Shipwrecks may also be considered historic or archaeological resources pursuant to N.J.A.C. 7:7E-3.36.

2. Shipwreck and artificial reef habitats may be subject to the marine fish and fisheries rule, N.J.A.C. 7:7E-8.2.

(b) Acceptable uses of shipwreck and artificial reef habitats include finfishing, shellfishing, and scuba diving.

(c) Any use, except archeological research, which would significantly adversely affect the usefulness of this special area as a fish habitat is prohibited. Persons conducting archeological research which significantly affects the usefulness of a shipwreck for fisheries purpose shall compensate for this loss by creation of an artificial reef of equal habitat value.

(d) Rationale: See note at the beginning of this subchapter.

#### **7:7E-3.14 Wet borrow pits**

(a) Wet borrow pits are scattered artificially created lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a permanently flooded depression. This includes, but is not limited to, flooded sand, gravel and clay pits, and stone quarries. Where a wet borrow pit is also a wetland and/or wetlands buffer, the Wetlands rule, N.J.A.C. 7:7E-3.27, and/or Wetlands Buffers rule, N.J.A.C. 7:7E-3.28, shall apply.

(b) All proposed dredging and filling activities shall comply with any applicable Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). In addition, such activities must receive a Water Quality Certificate pursuant to N.J.S.A. 58:10A et seq. and Section 401 of the Federal Clean Water Act if a Federal permit is required for the activities.

(c) Proposed uses which would promote the wildlife habitat and scenic amenity values of wet borrow pits are encouraged.

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(d) Surface mining is conditionally acceptable provided condition (b) above and the Mining rule, N.J.A.C. 7:7E-7.8, are met.

(e) Recreational use of wet borrow pits is acceptable provided that wildlife habitat disturbance is minimized.

(f) Disposal of dredged material is discouraged, but may be acceptable in limited cases, provided condition (b) above is met and that:

1. The dredged material is clean and non-toxic, an appropriate particle size for the site, and will not disturb groundwater flow or quality;
2. At least half of the water area in existence at the time of the first coastal permit application for filling of the pit remains as surface water in a pattern designed to maximize wildlife habitat value and create wetland areas, except that the entire lake may be filled if necessary to prevent the lake from acting as a channel for salt water intrusion into aquifers.

(g) Filling of wet borrow pits for construction is conditionally acceptable provided that:

1. The fill is clean and will not degrade groundwater quality;
2. At least half of the water area in existence at the time of the first coastal permit application for filling of the pit is left as open water;
3. Land-water edges are maximized and vegetated to promote native wildlife;
4. A water quality buffer zone of at least 50 feet is designated in accordance with (j) below around remaining water areas;
5. A program for water quality monitoring and maintenance is included with the application; and
6. Recreational uses in water and water quality buffer areas minimize wildlife disturbance.

(h) Discharge of liquid or solid waste, other than clean dredge fill of acceptable particle size, is prohibited.

(i) All proposed uses directly adjacent to wet borrow pits shall grade all banks at the immediate water's edge, except those in acceptable water access areas, to a slope not greater than 33 percent, and shall stabilize the surface and initiate succession of native vegetation adapted to water's edge conditions.

(j) A water quality buffer area is required around the perimeter of wet borrow pits. The minimum width of this buffer area will be 100 feet where soils are coarse (sands and gravels) and 50 feet elsewhere. Recreational use of the water quality buffer is acceptable provided that the disturbance is limited in extent and wildlife habitat disturbance is minimized. The remainder of the buffer area shall be allowed to succeed naturally to water's edge. Structures and paving, except at limited water access points for recreational use, are prohibited in the water quality buffer.

(k) Rationale: See note at the beginning of this Chapter.

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### **7:7E-3.15 Intertidal and subtidal shallows**

(a) Intertidal and subtidal shallows means all permanently or temporarily submerged areas from the spring high water line to a depth of four feet below mean low water.

(b) Development, filling, new dredging or other disturbance is discouraged but may be permitted in accordance with (c), (d), (e), and (f) below and with N.J.A.C. 7:7E-4.2 through 4.20.

(c) Maintenance dredging of intertidal and subtidal shallows is acceptable to maintain adequate water depths in accordance with N.J.A.C. 7:7E-4.6.

(d) New dredging in intertidal and subtidal shallows is discouraged, unless it complies with the following conditions:

1. There is a need for the proposed facility that requires the dredging that cannot be met by other similar facilities in reasonable proximity taking into account scope and purpose of the proposed facility;
2. There is no feasible alternative location for the proposed facility that requires the dredging, which would eliminate or reduce the amount of disturbance to intertidal and subtidal shallows without increasing impacts on other Special Areas; and
3. The proposed dredging and the facility that requires the dredging have been designed to minimize impacts to intertidal and subtidal shallows.

(e) The installation of submerged infrastructure within intertidal and subtidal shallows is conditionally acceptable, provided:

1. Directional drilling is used unless it can be demonstrated that the use of directional drilling is not feasible;
2. Where directional drilling is not feasible, there is no feasible alternative route that would not disturb intertidal and subtidal shallows;
3. The infrastructure is located deeply enough to avoid exposure or hazard; and
4. All trenches are backfilled to the preconstruction depth with naturally occurring sediment.

(f) The filling of intertidal and subtidal shallows for beach nourishment is conditionally acceptable provided it meets the requirements of the Filling rule at N.J.A.C. 7:7E-4.10(f) and the Coastal Engineering rule at N.J.A.C. 7:7E-7.11(d).

(g) Mitigation shall be required for the destruction of intertidal and subtidal shallows in accordance with (h) below. Mitigation proposals shall comply with the standards of N.J.A.C. 7:7E-3B. Mitigation shall not be required for the following:

1. Filling in accordance with N.J.A.C. 7:7E-4.10(c) and (e)1,2 and 3;
2. Maintenance dredging in accordance with N.J.A.C. 7:7E-4.6;
3. Beach nourishment in accordance with N.J.A.C. 7:7E-7.11(d);
4. New Dredging in accordance with N.J.A.C. 7:7E-4.7 to a depth not to exceed four feet below mean low water; and
5. Construction of a replacement bulkhead in accordance with N.J.A.C. 7:7E-



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7.11(e)2i or ii.

(h) Mitigation shall be required for the destruction of intertidal and subtidal shallows at a creation to lost ratio of 1:1 through the creation of intertidal and subtidal shallows on the site of the destruction. For the purposes of this section, creation means excavating upland to establish the characteristics, habitat and functions of an intertidal and subtidal shallow. Where on-site creation is not feasible, mitigation shall be accomplished as follows:

1. At a single family home or duplex property that is not part of a larger development, mitigation shall be in the form of a monetary contribution to the Wetlands Mitigation Fund. The monetary contribution shall be in the amount of the value of the land filled and the cost of creation of intertidal subtidal shallows of equal ecological value to those which are being lost; or

2. At a property other than a single family home or duplex property mitigation shall be performed in accordance with the following hierarchy:

i. If on site creation of intertidal and subtidal shallows is not feasible, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within the same 11-digit hydrologic unit code area, as defined at N.J.A.C. 7:7E-1.8, as the destruction;

ii. If on site creation of intertidal and subtidal shallows is not feasible in accordance with (h)2i above, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within an adjacent 11-digit hydrologic unit code area within the same watershed management area, as defined at N.J.A.C. 7:7E-1.8, as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrologic unit code area where the destruction is located;

iii. If the creation of intertidal and subtidal shallows required in (h)2ii is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a wetland system which was previously more ecologically valuable but has become degraded due to factors such as siltation, impaired tidal circulation, or contamination with hazardous substances (degraded wetland system) on the site of the destruction. For the purposes of this section, enhancement means actions performed to improve the characteristics, habitat and functions of an existing degraded wetland;

iv. If the enhancement of degraded wetlands required in (h)2iii above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within the same 11-digit hydrologic unit code area as the destruction;

v. If the enhancement of degraded wetlands required in (h)2iv above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within an adjacent 11-digit hydrologic unit code area within the same watershed management area as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrological unit code where the destruction is located;

iv. If the enhancement of degraded wetlands required in (h)2v above is not feasible, then mitigation shall be required in accordance with either of the following:

(1) Creation of intertidal and subtidal shallows at a creation to lost ratio of 1:1 within

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the same watershed management area; or

(2) Enhancement of degraded wetlands at an enhancement to loss ratio of 2:1 within the same watershed management area.

(i) Rationale: See note at the beginning of this chapter.

### **7:7E-3.16 Dunes**

(a) A dune is a wind or wave deposited or man-made formation of sand (mound or ridge), that lies generally parallel to, and landward of , the beach and the foot of the most inland dune slope. "Dune" includes the foredune, secondary or tertiary dune ridges and mounds, and all landward dune ridges and mounds, as well as man-made dunes, where they exist (see Appendix, Figure 1, incorporated herein by reference).

1. Formation of sand immediately adjacent to beaches that are stabilized by retaining structures, and/or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.

2. A small mound of loose, windblown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune."

(b) Development is prohibited on dunes, except for development that has no practicable or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. In addition, the removal of vegetation from any dune, and the excavation, bulldozing or alteration of dunes is prohibited, unless these activities are a component of a Department approved beach and dune management plan. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;

2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of a storm surge or wave runup (see N.J.A.C. 7:7E-3A);

3. Limited stairs, walkways, pathways, and boardwalks to permit access across dunes to beaches, in accordance with N.J.A.C. 7:7E-3A, provided they cause minimum feasible interference with the beach and dune system;

4. The planting of native vegetation to stabilize dunes in accordance with N.J.A.C. 7:7E-3A;

5. Sand fencing, either a brush type barricade or picket type, to accumulate sand and aid in dune formation in accordance with N.J.A.C. 7:7E-3A;

6. Shore protection structures which meet the Coastal Engineering rule at N.J.A.C. 7:7E-7.11(e); and

7. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1).

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(c) The creation of dunes for the purpose of shore protection is strongly encouraged. According to the National Flood Insurance Program (NFIP) Regulations established by the Federal Emergency Management Agency (FEMA), primary frontal dunes will not be considered as effective barriers to base flood storm surges and associated wave action where the cross-sectional area of the primary frontal dune, as measured perpendicular to the shoreline and above the 100-year stillwater flood elevation and seaward of the dune crest, is equal to or less than 1,100 square feet. This standard represents the minimal dune volume to be considered effective in providing protection from the 100-year storm surge and associated wave action, and should represent a "design dune" goal.

(d) Rationale: See note at the beginning of this Chapter.

### **7:7E-3.17 Overwash areas**

(a) An overwash area is an area subject to accumulation of sediment, usually sand, that is deposited landward of the beach or dune by the rush of water over the crest of the beach berm, a dune or a structure. An overwash area may, through stabilization and vegetation, become a dune (see Appendix, Figure 1).

1. The seaward limit of the overwash area is the seaward toe of the former dune, or the landward limit of the beach, in the absence of a dune.
2. The landward limit of the overwash area is the inland limit of sediment transport.
3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.

(b) Development is prohibited on overwash areas, except for development that has no prudent or feasible alternative in an area other than an overwash area, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Creation of dunes or expansion of existing dunes in accordance with N.J.A.C. 7:7E-3A;
2. Demolition and removal of paving and structures;
3. Limited, designated access ways for pedestrians and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are so oriented as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;
4. Shore protection structures which meet the Coastal Engineering rule at N.J.A.C. 7:7E-7.11(e);
5. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);
6. Removal of newly deposited overwash fans from public roads and or developed lots; and
7. Construction of street-end beach accessways along the oceanfront, provided they are oriented at an angle against the predominant northeast storm approach, are limited in width to no more than ten feet, and are defined/stabilized with sand fencing. These standards should be included in all beach and dune management plans for oceanfront locations.

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(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. In determining overwash potential, the protective capacity of newly created dunes will be evaluated in terms of the "design dune" goal discussed in N.J.A.C. 7:7E-3.16(c).

(d) A single story, beach/tourism oriented commercial development located within a commercial boardwalk area existing on July 19, 1993 is conditionally acceptable provided that it meets the following conditions:

1. The site is located within an area currently used and zoned for beach related commercial use, and is landward of the boardwalk;
2. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;
3. The facility is open to the general public and supports beach/tourism related activities, that is, retail, amusement and food services. Lodging facilities are excluded; and
4. The facility meets all the flood proofing requirements of the Flood Hazard Area Rule, N.J.A.C. 7:7E-3.25.

(e) Any development determined to be acceptable at (b) through (d) above shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B.

(f) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.18 Coastal high hazard areas**

(a) Coastal high hazard areas are flood prone areas subject to high velocity waters (V zones) as delineated on the Flood Insurance Rate Maps (FIRM) prepared by the Federal Emergency Management Agency (FEMA), and areas within 25 feet of oceanfront shore protection structures, which are subject to wave run-up and overtopping. (see Appendix, Figure 2 incorporated herein by reference). The Coastal High Hazard Area extends from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The inland limit of the V zone is defined as the V zone boundary line as designated on the FIRM or the inland limit of the primary frontal dune, whichever is most landward.

(b) Residential development, including hotels and motels, is prohibited in coastal high hazard areas except for single family and duplex infill developments that meet the standards of N.J.A.C. 7:7E-7.2(e) or (f) or development in Atlantic City in accordance with (g) below.

(c) In general, commercial development is discouraged in coastal high hazard areas.

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(d) Beach use related commercial development in coastal high hazard areas is conditionally acceptable within areas that are already densely developed, provided that:

1. The site is landward of the boardwalk;
2. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;
3. The facility is open to the general public and supports beach/tourism related activities, that is, retail, amusement and food services. Lodging facilities are excluded; and
4. The facility complies with all the flood proofing requirements at N.J.A.C. 7:7E-3.25, Flood hazard areas.

(e) Any development determined to be acceptable at (c) and (d) above shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B.

(f) All permanent structures shall be set back a minimum of 25 feet from oceanfront shore protection structures, typically including bulkheads, revetments and seawalls and occasionally jetties and groins if constructed at inlets. This condition is applicable only to shore protection structures that are of sufficient height and strength to provide resistance to storm waves. This condition does not apply to development in accordance with (g) below.

g) The following development in Atlantic City is acceptable in Coastal High Hazard Areas provided it meets the standards of N.J.A.C. 7:7E-3.49:

1. Development on or over existing ocean piers;
2. Pilings necessary to support development proposed on or over existing ocean piers; and
3. Development on or over the Boardwalk.

(h) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.19 Erosion Hazard Areas**

(a) Erosion hazard areas are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion, and damage from storms.

1. Erosion hazard areas may be identified by any one of the following characteristics:
  - i. Lack of beaches;
  - ii. Lack of beaches at high tide;
  - iii. Narrow beaches;
  - iv. High beach mobility;
  - v. Foreshore extended under boardwalk;
  - vi. Low dunes or no dunes;
  - vii. Escarped foredune;
  - viii. Steep beach slopes;
  - ix. Cluffed bluffs as adjacent to beach;

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- x. Exposed, damaged or breached jetties, groins, bulkheads or seawalls;
- xi. High long-term erosion rates; or
- xii. Pronounced downdrift effects of groins (jetties).

2. Erosion hazard areas extend inland from the edge of a stabilized upland area to the limit of the area likely to be eroded in 30 years for one to four unit dwelling structures, and 60 years for all other structures, including developed and undeveloped areas. This distance is measured from the crest of a bluff for coastal bluff areas, the most seaward established dune crest for unvegetated dune areas, the first vegetation line from the water for established vegetated dune areas, and the landward edge of a beach or the eight foot North American Datum (NAD), 1983, contour line, whichever is farther inland, for non-dune areas.

i. An established, unvegetated dune is a dune that has been in place for at least two winter seasons, or has been constructed with the approval of the Department.

ii. An established vegetated dune is a dune with an existing vegetative cover which has been growing on site for at least two growing seasons.

3. The extent of an erosion hazard area is calculated by multiplying the projected annual erosion rate at a site by 30 for the development of one to four unit dwelling structures and by 60 for all other developments.

(b) Development is prohibited in erosion hazard areas, except for:

1. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);

2. Shore protection activities which meet the appropriate Coastal Engineering Use Rule (N.J.A.C. 7:7E-7.11);

3. Single story, beach/tourism oriented commercial development located within a commercial boardwalk area existing on July 19, 1993 is conditionally acceptable provided that it meets the following conditions:

i. The site is located within an area currently used and zoned for beach related commercial use, and is landward of and adjacent to the boardwalk;

ii. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;

iii. The facility is open to the general public and supports beach/tourism related recreational activities, that is, retail, amusement and food services. Lodging facilities are excluded;

iv. The facility meets all the flood proofing requirements of the Flood Hazard Areas rule; and

v. The development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B;

4. Single family and duplex developments that meet the standards of N.J.A.C. 7:7E-7.2(e) or (f);

5. The construction of dune walkover structures and at-grade walkover pathways, in accordance with Department standards found at N.J.A.C. 7:7E-3A;

6. Dune creation and beach maintenance activities in accordance with Department standards found at N.J.A.C. 7:7E-3A; and

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7. The following development in Atlantic City provided it meets the standards of N.J.A.C. 7:7E-3.49:

- i. Development on or over existing ocean piers;
  - ii. Pilings necessary to support development proposed on or over existing ocean piers;
- and
- iii. Development on or over the Boardwalk.

(c) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.20 Barrier island corridor**

(a) Barrier island corridors are the interior portions of oceanfront barrier islands, spits and peninsulas. Along the New Jersey Coast, headlands are located between Monmouth Beach, Monmouth County and Pt. Pleasant Beach, Ocean County.

1. The oceanfront barrier island corridor encompasses that portion of barrier islands, spits and peninsulas (narrow land areas surrounded by both bay and ocean waters and connected to the mainland) that lies upland of wetlands, beach and dune systems, filled water's edges, and existing lagoon edges. Barrier island corridor does not include the headlands of northern Ocean County, Monmouth County, and the southern tip of Cape May County, which are part of the mainland.

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided that the development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B.

(c) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.21 Bay islands**

(a) Bay islands are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier island. Such islands may be connected to the mainland or barrier island by elevated or fill supported roads (see Appendix, Figure 3, incorporated herein by reference). Existing lagoon edges (N.J.A.C. 7:7E-3.24) are not bay islands.

1. In cases where a bay island is also a Filled Water's Edge (N.J.A.C. 7:7E-3.23), the more restrictive provisions of the two rules shall apply.

2. For the purposes of this chapter, the areas listed below are not considered bay islands. The impervious cover limits for these areas are determined under the Special Area rules at N.J.A.C. 7:7E-3 where applicable, and/or under N.J.A.C. 7:7E-5B.

#### **OCEAN COUNTY**

Bonnett Island, Stafford Township

Chadwick Island, Dover Township

Channel Island, Mantoloking Borough

Osborne Island, Little Egg Harbor Township

Pelican Island, Dover/Berkeley Townships

West Point Island, Lavallette Borough

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#### ATLANTIC COUNTY

Chelsea Heights, Atlantic City

Venice Heights, Atlantic City

Ventnor Heights, Ventnor City

#### CAPE MAY COUNTY

Princeton Harbor, Avalon Borough

West Wildwood, Wildwood City

West 17th Street, Ocean City

(b) On bay islands which abut either a paved public road or a conveyance component of an offsite treatment, conveyance and disposal system with adequate capacity to convey, treat and dispose of the sewage generated from the proposed development, or which abut neither a paved public road nor such a conveyance, non-water dependent development is prohibited unless it meets the standards of (d) below and water dependent development is discouraged. Water dependent development is conditionally acceptable provided that:

1. Impervious cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);

2. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

3. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site.

(c) On bay islands which abut a paved public road and abut the conveyance component of an offsite treatment, conveyance and disposal system with adequate capacity to convey, treat and dispose of the sewage generated from the proposed development, development is conditionally acceptable as follows:

1. Water dependent development is conditionally acceptable, provided that:

- i. Impervious cover does not exceed 30 percent of the bay island portion of the site (except pursuant to (d) below);

- ii. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

- iii. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and



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2. Non-water dependent development is conditionally acceptable provided that:

i. Impervious cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);

ii. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

iii. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site.

3. Impervious cover shall not exceed three percent of the bay island portion of the site unless the development is entirely water dependent and meets (d)1 above, in which case the impervious cover limit shall not exceed 30 percent.

(d) Redevelopment or modification within an existing development on a bay island is conditionally acceptable provided that:

1. The construction of buildings and/or concrete asphalt pavement is located on the area covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department and does not exceed the existing development as to any one of the following:

i. Number of units; or

ii. Square footage of interior floor space; and

2. Trees shall be planted and/or preserved on at least five percent of the bay island portion of the site in accordance with N.J.A.C. 7:7E-5.4(d) and (e).

### **7:7E-3.22 Beaches**

(a) Beaches are gently sloping areas of sand or other unconsolidated material, found on all tidal shorelines, including ocean, bay and river shorelines (see Appendix, Figure 1), that extend landward from the mean high water line to either:

1. A man-made feature generally parallel to the ocean, inlet, or bay waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except the sandy areas that extend fully under and landward of an elevated boardwalk are considered beach areas; or

2. The seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters.

(b) Development is prohibited on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, and that will not cause significant adverse long-term impacts to the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;

2. Dune creation and related sand fencing and planting of vegetation for dune stabilization, in accordance with N.J.A.C. 7:7E-3A;

3. The reconstruction of existing amusement and fishing piers and boardwalks;

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4. Temporary recreation structures for public safety such as first aid and lifeguard stations;

5. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e);

6. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);

7. Beach maintenance activities which do not adversely affect the natural functioning of the beach and dune system, and which do not preclude the development of a stable dune along the back beach area. These activities include routine cleaning, debris removal, mechanical sifting, maintenance of access ways and Department approved dune creation and maintenance activities;

8. Post-storm beach restoration activities involving the placement of clean fill material on beaches, and the mechanical redistribution of sand along the beach profile from the lower to the upper beach. These post-storm activities, which are different than routine beach maintenance activities, must be carried out in accordance with the standards found at N.J.A.C. 7:7E-3A; and

9. The following development in Atlantic City provided it meets the standards of N.J.A.C. 7:7E-3.49:

- i. Development on or over existing ocean piers;
- ii. Pilings necessary to support development proposed on or over existing ocean piers; and
- iii. Development on or over the Boardwalk.

(c) Public access and barrier free access to beaches and the water's edge is encouraged. Coastal development that unreasonably restricts public access is prohibited.

(d) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.23 Filled water's edge**

(a) Filled water's edge areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water. Some existing or former dredged material disposal sites and excavation fill areas are filled water's edge (see Appendix, Figure 4, incorporated herein by reference).

(b) The "waterfront portion" is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and occupy at least 30 percent of its perimeter along the navigable water's edge.

(c) On filled water's edge sites with direct water access (that is, those sites without extensive inter-tidal shallows or wetlands between the upland and navigable water), development shall comply with the following:

- 1. The waterfront portion of the site shall be:
  - i. Developed with a water dependent use, as defined at N.J.A.C. 7:7E-1.8;
  - ii. Developed with an at-grade deck provided:

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- (1) The deck is open to the general public;
  - (2) The use of the deck is water oriented;
  - (3) The deck is not enclosed; and
  - (4) A public walkway is provided around the deck landward of the mean high water line at the water's edge; or
- iii. Left undeveloped for future water dependent uses;
2. On the remaining non-waterfront portion of the site, provision of additional area devoted to water dependent or water-oriented uses may be required as a special case at locations which offer a particularly appropriate combination of natural features and opportunity for waterborne commerce and recreational boating; and
  3. On large filled water's edge sites, of about 10 acres or more upland acres, where water-dependent and water-oriented uses can co-exist with other types of development, a greater mix of land uses may be acceptable or even desirable. In these cases, a reduced waterfront portion, that is, less than that provided by a 100 foot setback, may be acceptable provided that non-water related uses do not adversely affect either access to or use of the waterfront portion of the site.
- (d) On filled water's edge sites without direct access to navigable water, the area to be devoted to water related uses will be determined on a case-by-case basis.
- (e) On filled water's edge sites with an existing or pre-existing water dependent use, that is, one existing at any time since July of 1977, development must comply with the following additional conditions:
1. For sites with an existing or pre-existing marina, development that would reduce the area currently or recently devoted to the marina is acceptable if:
    - i. For every two housing units proposed on the filled water's edge the existing number of boat slips in the marina mooring area (N.J.A.C. 7:7E-3.10) is increased by one and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of upland to create slips is acceptable;
    - ii. Marina services are expanded in capacity and upgraded (that is, modernized) to the maximum extent practicable; and
    - iii. In-water or off site boat storage capability is demonstrated or upland storage is provided to accommodate at least 75 percent of the marina's boats, as determined by maximum slip capacity, 26 feet in length and longer, and 25 percent of the marina's boats less than 26 feet in length.
  2. For sites with an existing or pre-existing water dependent use other than a marina, development that would reduce or adversely affect the area currently or recently devoted to the water dependent use is discouraged.
- (f) In waterfront areas located outside of the CAFRA zone the water dependent use may be a public walkway, provided the upland walkway right-of-way is at least 30 feet wide, unless there are existing onsite physical constraints which cannot be removed or altered to meet this requirement.

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(g) The development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B.

(h) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are deemed infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development under the following conditions:

1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent, commercial, transportation, recreation, and compatible maritime support services uses;
2. The developed land uses closest to the water's edge are water oriented;
3. Currently active maritime port and industrial land uses are preserved;
4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and
5. All other coastal rules are met.

(i) On all filled water's edge sites, development must comply with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11). Public access to the waterfront will not be required at single family or duplex residential lots along the waterfront, which are not part of a larger development.

(j) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-3.24 Existing lagoon edges**

(a) Existing lagoon edges are defined as existing man-made land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots along lagoons for residential and commercial development.

1. Existing Lagoon Edges extend upland to the limit of fill, or the first paved public road or railroad generally parallel to the water area, whichever is less.

(b) Development of existing lagoon edges is acceptable provided:

1. The proposed development is compatible with existing adjacent land and water uses;
2. Existing retaining structures are adequate to protect the proposed development;
3. New or reconstructed retaining structures are consistent with the filling rule at N.J.A.C. 7:7E-4.10 and structural shore protection rule N.J.A.C. 7:7E-7.11(e); and
4. The development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B.

(c) See note at the beginning of this Chapter.

#### **7:7E-3.25 Flood hazard areas**

(a) Flood hazard areas are the floodway and flood fringe area around rivers, creeks

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and streams as delineated by the Department under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.); and areas defined or delineated as an A or a V zone by the Federal Emergency Management Agency (FEMA). They are areas subject to either tidal or fluvial flooding. Where flood hazard areas have been delineated by both the Department and FEMA, the Department delineations shall be used. Where flood hazard areas have not been delineated by the Department or FEMA, limits of the 100 year floodplain will be established by computation on a case-by-case basis. The seaward boundary shall be the mean high water line (see Appendix 1, Figures 6 and 7, incorporated herein by reference).

1. A complete list of streams for which the Department has delineated the flood hazard area can be found in N.J.A.C. 7:13 (Rules Governing Flood Hazard Areas).

2. The Federal Emergency Management Agency has delineated the tidal floodplain for all Coastal Zone municipalities.

3. Where portions of the flood hazard areas meet the definition of another Special Water's Edge type (Filled Water's Edge, Lagoon Edge, Beaches, Dunes, Overwash Areas, Erosion Hazard Areas, Coastal High Hazard Areas, Barrier Island Corridor, Bay Islands, Wetlands, Wetlands Buffer, Coastal Bluffs, and Intermittent Stream Corridors), the Special Water's Edge rules shall apply in terms of location acceptability and the flood hazard areas rule shall apply in terms of setback and flood proofing requirements.

(b) Dedication of flood hazard areas for purposes of public open space is encouraged.

(c) In an undeveloped portion of a flood hazard area that is within 100 feet of a navigable water body, development is prohibited unless the development is for water dependent use. "Navigable" and "water dependent" are defined at N.J.A.C. 7:7E- 1.8. For the purposes of this subsection and (d) below, an "undeveloped" area is an area that has no impervious cover.

(d) In a portion of an undeveloped flood hazard area that is 100 feet or farther from a navigable waterway, development is conditionally acceptable provided the development would not prevent potential water-dependent use in any portion of the flood hazard area within 100 feet of a navigable water body.

(e) Retention and detention basins developed specifically for storm water management purposes are conditionally acceptable provided they are constructed in accordance with the Stormwater Management rule (N.J.A.C. 7:7E-8.7).

(f) Development in areas subject to fluvial flooding must conform with the Flood Hazard Area Control Act and rules adopted thereunder. Development in areas subject to tidal flooding must conform with applicable federal flood hazard reduction standards as found at 44 C.F.R. Part 60 and the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.

(g) Development in a flood hazard area shall comply with the requirements for impervious cover and vegetative cover under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B, as applicable.

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(h) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.26 (Reserved)**

### **7:7E-3.27 Wetlands**

(a) Wetlands or wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

1. Wetlands areas are identified and mapped on the following:

i. National Wetlands Inventory Maps produced by the U.S. Fish and Wildlife Service at a scale of 1:24,000 (generalized locations only);

ii. Coastal wetland maps, pursuant to the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) prepared by the DEP at a scale of 1:2,400; and

iii. Freshwater wetland maps prepared by DEP at a scale of 1:12,000 (generalized locations only).

Note: Maps referenced in (a)1ii and iii above are available from the DEP Map and Publications sales office (609) 777-1038.

2. Generalized locations of some wetland types can be found in county soil surveys prepared by the U.S. Department of Agriculture, Soil Conservation Service.

3. The maps referenced under (a)1i, iii, and 2 above shall be useful as an indicator to assist in the preliminary determination of the presence or absence of wetlands only. They have been determined to be unreliable for the purposes of locating the actual wetlands boundary on a specific site.

4. All tidal and inland wetlands, excluding the delineated tidal wetlands defined pursuant to N.J.A.C. 7:7-2.2, shall be identified and delineated in accordance with the USEPA three-parameter approach (that is, hydrology, soils and vegetation) specified under N.J.A.C. 7:7A-1.4 of the Freshwater Wetlands Protection Act Rules.

(b) Development in wetlands defined under the Freshwater Wetlands Protection Act of 1987 is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A).

(c) Development of all kinds in all other wetlands not defined in (b) above is prohibited unless the Department can find that the proposed development meets the following four conditions:

1. Requires water access or is water oriented as a central purpose of the basic function of the activity (this rule applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent as defined in N.J.A.C. 7:7E-1.8;

1. Requires water access or is water oriented as a central purpose of the basic function of the activity (this rule applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent as defined in N.J.A.C. 7:7E-1.5;

2. Has no prudent or feasible alternative on a non-wetland site;

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3. Will result in minimum feasible alteration or impairment of natural tidal circulation (or natural circulation in the case of non-tidal wetlands); and

4. Will result in minimum feasible alteration or impairment of natural contour or the natural vegetation of the wetlands.

(d) In particular, dumping solid or liquid wastes and applying or storing certain pesticides on wetlands are prohibited.

(e) No action by the Commissioner shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the Department of Environmental Protection, the Natural Resource Council and the State Mosquito Control Commission in said Department, the Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of Revised Statutes. This rule does not supersede the authority of the State Mosquito Commission to undertake mosquito control projects authorized by chapter 9 of Title 26 of the Revised Statutes.

(f) Development that adversely affects white cedar stands such as water table drawdown, surface and groundwater quality changes and the introduction of non-native plant species is prohibited.

(g) For projects which require a Waterfront Development permit, the reuse of former dredged material disposal sites for continued dredged material disposal is conditionally acceptable provided the following criteria are met:

1. The site has been used for dredged material disposal within the past 10 years;
2. The site has existing dikes or berms in sound condition, and/or has sufficient area of previously disposed material within the previously disturbed disposal area to allow the construction of structurally sound dikes and berms;
3. There are no anticipated adverse effects on threatened or endangered species;
4. There are no colonial nesting birds present on site which would be adversely affected (seasonal restrictions may be required);
5. No wetlands regulated pursuant to the Wetlands Act of 1970 would be adversely affected;
6. The former dredged material disposal area is not subject to daily tidal inundation, and the vegetation community is limited primarily to scrub/shrub or phragmites; and
7. The required Waterfront Development permit and Water Quality Certification are obtained.

(h) If an application to disturb or destroy wetlands meets the standards for permit approval, the Department will require the applicant to mitigate for the loss or degradation of the wetlands in accordance with the following:

1. Mitigation for the loss of wetlands subject to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., shall meet the standards of N.J.A.C. 7:7A.

2. When a permit allows the disturbance or loss of wetlands by filling or other means, this disturbance or loss shall be compensated for as specified under (h)9 below unless the applicant can prove through the use of productivity models or other similar studies, that

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by restoring or creating a lesser area, there will be replacement of wetlands of equal ecological value. In order to demonstrate equal ecological value, the applicant shall survey and provide written documentation regarding, at a minimum, existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat conditions and detail how the proposed mitigation plan will replace the ecological values of the wetland to be lost or disturbed.

3. Mitigation shall be performed prior to or concurrent with activities that will permanently disturb wetlands and immediately after activities that will temporarily disturb these habitats. A letter of credit or other financial assurance is required prior to approval of the mitigation proposal by the Department, except if the mitigator is a government agency or entity that is exempt from this requirement under Federal law. The financial assurance requirements are found at N.J.A.C. 7:7E-3B.3.

4. Where the Department permits a mitigation surface area of less than 2:1, monitoring by the permittee at a frequency determined by the Department to be appropriate on a case-by-case basis shall be required. In such cases, additional mitigation or further remedial action shall be required at a level and within the forms determined to be appropriate on a case-by-case basis by the Department when the Department determines that a net loss of equal ecological value occurs. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from existing natural resources protected under the applicable Special Area Rules (N.J.A.C. 7:7E-3) is not an acceptable form of mitigation, nor is transfer of title of existing wetlands or intertidal or subtidal shallows to a government agency or conservation organization.

5. The Department will not consider a mitigation proposal in determining whether a project should be awarded a permit, but will require mitigation as a condition of any permit found to be acceptable under the criteria listed in N.J.A.C. 7:7A-3 and/or N.J.A.C. 7:7E-3.15 and 3.27.

6. As a condition of every creation or enhancement plan authorized under this subsection, an applicant shall sign a Department approved conservation restriction and register this restriction on the deed for the subject parcel. This conservation restriction will provide that no regulated activities will occur in the created or enhanced wetland area. This conservation restriction shall be approved by the Department and shall run with the land and be binding upon the applicant and the applicant's successors in interest in the premises or any part thereof. The permit will not become effective until the conservation restriction is recorded with the county clerk or Registrar of Deeds and Mortgages, if applicable. Any regulated activities undertaken on the site before a copy of the recorded conservation restriction is submitted to the Department will be considered in violation of these rules.

i. No future development will be permitted on the mitigation site unless the Department finds that the regulated activity has no practicable alternative which would:

- (1) Not involve a wetland site;
- (2) Involve a wetland but would have a less adverse impact on the aquatic ecosystem;
- (3) Not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences, for those attendant on the original proposal; and

(4) There is a compelling public need for the activity greater than the need to protect the mitigation site.



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ii. To satisfy (h)6 above, the applicant shall provide a copy of the recorded document or a receipt showing that the conservation restriction has been recorded at the county clerk's office.

7. Except for publicly funded projects, as described at (h)7i below, any mitigation carried out off-site shall be on private property.

i. Mitigation for publicly funded projects may be carried out on public lands provided that these lands were private lands purchased by a public agency expressly for the purpose of performing mitigation.

8. Future development of the mitigation site is prohibited and as a condition of any permit which includes creation of the mitigation site, the owner shall be required to record a conservation restriction governing that site.

9. The Department distinguishes between four types of mitigation: restoration, creation, enhancement, and contribution. Depending on the circumstances under which wetlands are lost or disturbed, different types of mitigation may be required by the Department. The types of mitigation are explained below, in decreasing order of their desirability:

i. Restoration refers to actions performed on the site of a regulated activity, within six months of the commencement of the regulated activity, in order to reverse or remedy the effects of the activity on the wetland and to restore the site to preactivity condition.

(1) Restoration shall be required at a ratio of one acre created to one acre lost or disturbed. If restoration actions are performed more than six months after the commencement of the regulated activity which disturbed the wetland, these actions will no longer be considered restoration, but will be considered creation, and will be governed by the provisions of (h)9ii(3) below.

(2) If restoration actions are performed on degraded wetlands offsite, these actions will be considered enhancement and will be governed by the provisions of (h)9iii below.

ii. Creation refers to actions performed to establish wetland characteristics, habitat and functions on:

(1) A non-wetlands site; or

(2) A former wetlands site which has been filled or otherwise disturbed such that it no longer retains wetland characteristics. If the site retains wetland characteristics such that it meets the definition of a degraded wetland pursuant to N.J.A.C. 7:7A-1.4, it is not eligible for use in creation. Rather, it is only eligible for enhancement activities pursuant to (h)9iii below. If the disturbance to a formerly wetlands site is the result of a violation of the Freshwater Wetlands Protection Act and/or the Wetlands Act of 1970, the Department may, at its discretion, condition an approval of a mitigation proposal, or a permit, or both, on the resolution of the violation.

(3) Creation will be required at a ratio of two acres created to one acre lost or disturbed. Under no circumstances shall the mitigation area be smaller than the disturbed area.

(4) Creation shall not be permitted on a site that retains wetlands characteristics.

iii. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing, degraded wetland such that the enhanced wetland will have resource values and functions similar to an undisturbed wetland. The enhancement requirement will be determined on a case-by-case basis.

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iv. Contribution refers to the donation of money or land. The Department will permit the donation of land only after determining that all alternatives to the donation are not practicable or feasible, or that the permanent protection of the land will provide ecological benefits equal to or greater than those resulting from the creation of wetlands. This determination will be made in consultation with the United States Environmental Protection Agency (USEPA) for freshwater wetlands. Monies donated shall be used for the purchase of land to provide areas for wetland losses, to provide areas for restoration of degraded wetlands, and to provide areas to preserve wetlands and transition areas determined to be of critical importance, and the transfer of funds for research to enhance the practice of mitigation. If money is donated, the Department will require an amount equivalent to the lesser of the following costs:

(1) Purchasing and enhancing existing degraded wetlands, resulting in preservation of wetlands of equal ecological value to those which are being lost; or

(2) Purchase of property and the cost of creation of wetlands of equal ecological value to those which are being lost.

v. If the Department determines that land may be donated as part or all of a contribution to mitigate for the destruction of freshwater wetlands, the Wetlands Mitigation Council must first determine that the donated land has the potential to be a valuable component of the wetlands ecosystem.

10. All mitigation projects shall be carried out on-site to the maximum extent practicable. Mitigation of wetlands, on-site or off-site, from other existing climax habitats is not practicable and is discouraged.

i. If on-site mitigation is found to be impracticable, off-site mitigation shall be considered and implemented within the same watershed or estuary if feasible.

11. All mitigation proposals submitted to the Department shall be prepared in accordance with N.J.A.C. 7:7E-3B.

(i) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.28 Wetlands buffers**

(a) Wetlands buffer or transition area means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands or serves as an integral component of the wetlands ecosystem (see Appendix, Figure 7). Wider buffers than those noted below may be required to establish conformance with other Coastal Rules, including, but not limited to, 7:7E-3.38 and 3.39.

1. A wetlands buffer or transition area of up to 150 feet in width shall be established adjacent to all wetlands defined and regulated under the Freshwater Wetlands Protection Act. (Refer to the Freshwater Wetland Protection Act Rules, N.J.A.C. 7:7A, for further guidance).

2. For all other wetlands, including wetlands regulated under the Coastal Wetlands Act of 1970, a wetlands buffer of up to 300 feet shall be established.

(b) Subject to (a) above, all wetlands buffers (that is, transition area) associated with wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

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(c) Development is prohibited in a wetlands buffer around all other wetlands, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone between the wetlands and surrounding upland. The precise geographic extent of the actual wetlands buffer required on a specific site shall be determined on a case-by-case basis using these standards.

(d) In areas of the coastal zone which are within the Hackensack Meadowlands District, the appropriate buffer width shall be determined in accordance with the requirements set forth in the Hackensack Meadowlands District Zoning Regulations.

#### **7:7E-3.29(Reserved)**

#### **7:7E-3.30(Reserved)**

#### **7:7E-3.31 Coastal Bluffs**

(a) A coastal bluff is a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment which is adjacent to the shoreline or which is demonstrably associated with shoreline processes.

1. The waterward limit of a coastal bluff is a point 25 feet waterward of the toe of the bluff face, or the mean high water line, whichever is nearest the toe of the bluff.

2. The landward limit of a coastal bluff is the landward limit of the area likely to be eroded within 50 years, or a point 25 feet landward of the crest of the bluff, whichever is farthest inland (see Appendix, Figures 7 and 8, incorporated herein by reference).

3. Steep slopes (N.J.A.C. 7:7E-3.34) are isolated inland areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes or adjacent to the shoreline and associated wetlands, or contributing sediment to the system, will be considered coastal bluffs.

(b) Development is prohibited on coastal bluffs, except for linear development which meets the rule on the Location of Linear Development (N.J.A.C. 7:7E-6.1), shore protection activities which meet the appropriate Coastal Engineering Use rules (N.J.A.C. 7:7E-7.11), and single family homes and duplexes which are not located along the shorelines of the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay and comply with N.J.A.C. 7:7E-7.2(e) or (f).

(c) The stabilization of coastal bluffs with vegetation is encouraged.

(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-3.32 Intermittent stream corridors**

(a) Intermittent stream corridors are areas including and surrounding surface water drainage channels in which there is not a permanent flow of water and which contain an area or areas with a seasonal high water table equal to or less than one foot. The inland extent of these corridors is either the inland limit of soils with a seasonal high water table depth equal to, or less than one foot, or a disturbance of 25 feet measured from the top of

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the channel banks, whichever is greater (see Appendix, Figures 7 and 9, incorporated herein by reference).

1. Where an intermittent stream corridor is also a wetland, the Wetlands rule (N.J.A.C. 7:7E-3.27) shall apply.

(b) Uses that promote undisturbed growth of native vegetation and wildlife habitat value are encouraged.

(c) Cutting, filling, damming, detention basins for runoff recharge, paving, structures or any other activities that would directly degrade the function of intermittent stream corridors, except for linear infrastructure for which there is no feasible alternate route, is prohibited.

(d) Intermittent streams not subject to the ebb and flow of the tide shall also comply with the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A).

(e) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-3.33 Farmland conservation areas**

(a) Farmland conservation areas are defined as any contiguous area of 20 acres or more (in single or multiple tracts of single or multiple ownership) with soils in the Capability Classes I, II and III or special soils for blueberries and cranberries as mapped by the United States Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys, which are actively farmed, or suitable for farming, unless it can be demonstrated by the applicant that new or continued use of the site for farming or farm dependent purposes is not economically feasible. Farming or farm-dependent purposes include nurseries, orchards, vegetable and fruit farming, raising grains and seed crops, silviculture (such as Christmas tree farming), floriculture (including greenhouses), dairying, grazing, livestock raising, and wholesale and retail marketing of crops, plants, animals and other related commodities.

(b) Farmland conservation areas shall be maintained and protected for open space or farming purposes. Farming or farm-dependent uses are permitted uses in farmland conservation areas. Housing is permitted only if it is an accessory use to farming. Mining is permitted only in accordance with a reclamation plan which meets the requirements of the Mining Use rule (N.J.A.C. 7:7E-7.8).

(c) Continued, renewed, or new farming is encouraged in farmland conservation areas.

(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-3.34 Steep slopes**

(a) Steep slopes are land areas with slopes greater than 15 percent, which are not adjacent to the shoreline and therefore not coastal bluffs (see N.J.A.C. 7:7E-3.31). Steep slopes include natural swales and ravines, as well as manmade areas, such as those

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created through mining for sand, gravel, or fill, or road grading. Slopes of less than 15 percent are not considered to be steep slopes.

(b) Development on steep slopes is discouraged where wetlands, wetland buffers, intermittent stream corridors, threatened and endangered species habitats or water areas are located adjacent to or at the base of the slope and on steep slopes which are forested as defined at N.J.A.C. 7:7E-5.5(c).

(c) Development on steep slopes other than those listed in (b) above, is conditionally acceptable provided:

1. The steep slope is vegetated with native woody vegetation to the maximum extent practicable; and
2. Stabilization measures are used, if necessary, such as terracing and paving, that are consistent with the natural or predevelopment character of the entire site, to the maximum extent practicable.

(d) Rationale: See note in the beginning of this chapter.

### **7:7E-3.35 Dry borrow pits**

(a) Dry borrow pits are excavations for the purpose of extracting coastal minerals which have not extended below the groundwater level. This includes, but is not limited to, dry sand, gravel and clay pits, and stone quarries.

(b) Surface mining is conditionally acceptable, provided the mining use rule at N.J.A.C. 7:7E-7.8 is satisfied.

(c) Channeling clean surface runoff into dry sand and gravel pits for the purposes of aquifer recharge is encouraged. Pavement runoff may be channeled into dry borrow pits provided that it is adequately filtered to remove pavement contaminants.

(d) Discharge of clean effluent from liquid waste treatment facilities for aquifer recharge is encouraged (e.g., tertiary sewage effluent), provided groundwater quality is monitored and maintained.

(e) Storing water in impermeable dry borrow pits is conditionally acceptable.

(f) Dredged material disposal is conditionally acceptable provided that:

1. The dredged material will not degrade groundwater quality;
2. The dredged material is of a particle size that will not disturb groundwater hydrology; and
3. Dredged material disposal is compatible with neighboring uses.

(g) Solid waste disposal is conditionally acceptable on a case-by-case basis provided that:

1. Waste disposal is compatible with neighboring uses;

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2. Elevations of the landfill do not exceed original surface elevations before mining; and

3. The waste disposal complies with the solid and hazardous waste rule at N.J.A.C. 7:7E-8.22.

(h) Filling or grading for construction is conditionally acceptable provided the fill is clean and of a texture that will not disturb local groundwater flow.

(i) All proposed uses must reduce all banks to a slope of less than one in three, stabilize them, and prepare them for planting, and initiate native successions.

(j) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.36 Historic and archaeological resources**

(a) Historic and archaeological resources include objects, structures, shipwrecks, buildings, neighborhoods, districts, and man-made or man-modified features of the landscape and seascape, including historic and prehistoric archaeological sites, which either are on or are eligible for inclusion on the New Jersey or National Register of Historic Places.

(b) Development that detracts from, encroaches upon, damages, or destroys the value of historic and archaeological resources is discouraged.

(c) Development that incorporates historic and archaeological resources in sensitive adaptive reuse is encouraged.

(d) Scientific recording and/or removal of the historic and archaeological resources or other mitigation measures must take place if the proposed development would irreversibly and/or adversely affect historic and archaeological resources. Surveys and reports to identify and evaluate historic and archaeological resources potentially eligible for the New Jersey or National Registers shall be performed by professionals who meet the National Park Service's Professional Qualifications Standards in the applicable discipline. Professional procedures and reports shall meet the applicable Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and the New Jersey Historic Preservation Office's professional reporting and surveying guidelines, once these guidelines are promulgated as rules, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. A description of the qualifications and performance standards is available at the Historic Preservation Office.

(e) New development in undeveloped areas near historic and archaeological resources is conditionally acceptable, provided that the design of the proposed development is compatible with the appearance of the historic and archaeological resource. For archaeological resources within the area of the undertaking, avoidance and protection is appropriate. When this is not feasible and prudent, and these resources are of value solely for the information which they contain, archaeological data recovery to mitigate the project impact will be required.

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(f) Recovery of shipwrecks consistent with the protection of historic values and environmental integrity of shipwrecks and their sites may be permitted subject to the conditions listed at (f) 1 through 7 below. The recovery of shipwrecks must also be consistent with the Shipwrecks and artificial reefs rule at N.J.A.C. 7:7E-3.13.

1. The proposed project is in the public interest;
2. The archaeological knowledge gained will outweigh the loss to future archaeological research and to the public of the preserved shipwreck;
3. The applicant has expertise in underwater archaeology as outlined by the Federal Requirements 36 CFR 66, pursuant to the Archaeological and Historic Preservation Act of 1974 (P.L. 93-291), and through the National Environmental Policy Act, the National Historic Preservation Act of 1966, (as amended), the Abandoned Shipwreck Act of 1987, and their respective implementing regulations and guidelines;
4. Artifacts will be recovered in an archaeologically appropriate manner;
5. Recovered artifacts will be analyzed and inventoried, and as appropriate, preserved, restored, and/or made accessible to future researchers;
6. Two copies of a professional archaeological report will be prepared for the Department giving the following information about the shipwreck and its excavation: Historic background, description of environment, salvage methodology, artifact analysis, description of techniques used in preservation of artifacts, base map, narrative and grid map on artifacts recovered, bibliography, photographs, National Register documentation and conclusions; and
7. The entire exploration and salvage effort will be in accordance with the Secretary of the Interior's 1983 Standards and Guidelines for Archaeology and Historic Preservation, and the Department of the Interior's 1990 Abandoned Shipwreck Act Final Guidelines which are available from the Historic Preservation Office.

(g) The Department may require the submission of a cultural resource survey report if it is determined that there is a known historic or prehistoric resource in the project area, or a reasonable potential for the presence of such a resource, which may be affected by a proposed development. However, in general, such surveys will not be required for the developments and/or sites listed below:

1. Single family and duplex developments which are not part of a larger development;
2. Sites which can be documented as being previously disturbed to the extent that any archaeological resources present would have been completely destroyed;
3. Sites which are located on lands containing fill material, including Psammments soils (PN, PO, PW) or Urban Land Soils (UL, UP), as defined in the appropriate County Soil Survey; and
4. The replacement of structures and utilities, in-place and in-kind, provided that the area of previous disturbance does not increase.

(h) The ultimate decision on the requirement for a cultural resource survey will be made by the Department's Land Use Regulation Program, based on information received in response to public comments or information provided by the New Jersey Historic Preservation Office regarding the presence of known historic and prehistoric resources or the potential for their presence.

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### **7:7E-3.37 Specimen trees**

(a) Specimen trees are the largest known individual trees of each species in New Jersey. The Department's Division of Parks and Forestry maintains a list of these trees (see "New Jersey's Biggest Trees", published by the Department's Division of Parks and Forestry, Summer 1991 for a listing of specimen trees). In addition, large trees approaching the diameter of the known largest tree shall be considered specimen trees. Individual trees with a circumference equal to or greater than 85 percent of the circumference of the record tree, as measured 4.5 feet above the ground surface, for a particular species shall be considered a specimen tree.

(b) Development is prohibited that would significantly reduce the amount of light reaching the crown, alter drainage patterns within the site, adversely affect the quality of water reaching the site, cause erosion or deposition of material in or directly adjacent to the site, or otherwise injure the tree. The site of the tree extends to the outer limit of the buffer area necessary to avoid adverse impacts, or 50 feet from the tree, whichever is greater.

(c) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.38 Endangered or threatened wildlife or plant species habitats**

(a) Endangered or threatened wildlife or plant species habitats are areas known to be inhabited on a seasonal or permanent basis by or to be critical at any stage in the life cycle of any wildlife or plant identified as "endangered" or "threatened" species on official Federal or State lists of endangered or threatened species, or under active consideration for State or Federal listing. The definition of endangered or threatened wildlife or plant species habitats include a sufficient buffer area to ensure continued survival of the population of the species. Absence of such a buffer area does not preclude an area from being endangered or threatened wildlife or plant species habitat.

1. Areas mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (known hereafter as Landscape Maps) are subject to the requirements of this section unless excluded in accordance with (c)2 below. Buffer areas, which are part of the endangered or threatened wildlife species habitat, may extend beyond the mapped areas. The Department's Landscape Maps, with a listing of the endangered and threatened species within a specific area, are available from the Department's Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division's web address, [www.state.nj.us/dep/fgw/ensphome](http://www.state.nj.us/dep/fgw/ensphome).

2. Information on the areas mapped as endangered or threatened plant species habitat on the Department's Landscape Maps and the occurrence of endangered or threatened plant species habitat is available from the Department's Office of Natural Lands Management, Natural Heritage Database at PO Box 404, Trenton, New Jersey 08625-0404.

3. The required endangered or threatened wildlife or plant species habitat buffer area shall be based upon the home range and habitat requirements of the species and the development's anticipated impacts on the species habitat.



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(b) Development of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated, through an Endangered or Threatened Wildlife or Plant Species Impact Assessment as described at N.J.A.C. 7:7E-3C.2, that endangered or threatened wildlife or plant species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected.

(c) Applicants for development of sites that contain or abut areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps shall either:

1. Demonstrate compliance with this rule by conducting an Endangered or Threatened Wildlife Species Impact Assessment in accordance with N.J.A.C. 7:7E-3C.2; or

2. Demonstrate that the proposed site is not endangered or threatened wildlife species habitat and this rule does not apply by conducting an Endangered or Threatened Wildlife Species Habitat Evaluation in accordance with N.J.A.C. 7:7E-3C.3.

(d) If the Department becomes aware of an occurrence of an endangered or threatened wildlife species on a site that is not mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps, and the Department determines that the habitat may be suitable for that species, the Department shall notify the applicant and the applicant shall demonstrate compliance with or inapplicability of this rule in accordance with (c) above.

(e) If the Department becomes aware of an occurrence of an endangered or threatened plant species on a site that is not in the Natural Heritage Database, the Department will notify the applicant and the applicant shall demonstrate compliance with this rule in accordance with (b) above.

(f) The Department is responsible for the promulgation of the official Endangered and Threatened Wildlife lists pursuant to the Endangered and Non-Game Species Conservation Act, N.J.S.A. 23:2A et seq. These lists include wildlife species that are endangered and threatened in New Jersey as well as wildlife species officially listed as endangered or threatened pursuant to the Endangered Species Act of 1973, 16 U.S.C.1531 et seq. Because the lists are periodically revised by the Department in accordance with N.J.S.A. 23:2A-1 et seq., the lists are not published as part of this rule. The lists are found at N.J.A.C. 7:25-4.13 and 7:25-4.17, the rules adopted pursuant to the Endangered and Non-Game Species Conservation Act. To obtain a copy of the most current Endangered and Threatened Wildlife lists, please contact the Department, Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division's web address, [www.state.nj.us/dep/fgw/ensphome](http://www.state.nj.us/dep/fgw/ensphome), or by writing to the Division at PO Box 400, Trenton, New Jersey 08625-0400.

(g) The Department is responsible for promulgation of the official Endangered Plant Species List pursuant to N.J.S.A. 13:1B-15. The Endangered Plant Species List, N.J.A.C. 7:5C-5.1, includes plant species determined by the Department to be endangered in the State as well as plant species officially listed as endangered or threatened or under active consideration for Federal listing as Endangered or Threatened. Because the Endangered

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Plant Species List is periodically revised based on new information documented by the the Department, it is not published as part of this rule. To obtain the most current Endangered Plant Species List, please contact the Department, Division of Parks and Forestry, Office of Natural Land Management, PO Box 404, Trenton, NJ 08625-0404.

(h) For sites located within the Pinelands National Reserve and the Pinelands Protection Area, the plant species listed in the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-6.24) are also considered endangered or threatened plant species.

(i) Rationale: See OAL Note at the beginning of this chapter.

### **7:7E-3.39 Critical wildlife habitats**

(a) Critical wildlife habitats are specific areas known to serve an essential role in maintaining wildlife, particularly in wintering, breeding, and migrating.

1. Rookeries for colonial nesting birds, such as herons, egrets, ibis, terns, gulls, and skimmers; stopovers for migratory birds, such as the Cape May Point region; and natural corridors for wildlife movement merit a special management approach through designation as a Special Area.

2. Ecotones, or edges between two types of habitats, are a particularly valuable critical wildlife habitat. Many critical wildlife habitats, such as salt marsh water fowl wintering areas, and muskrat habitats, are singled out as water or water's edge areas.

3. Definitions and maps of critical wildlife habitats are currently available only for colonial waterbird habitat in the 1979 Aerial Colony Nesting Waterbird Survey for New Jersey (NJDEP, Division of Fish and Wildlife). Until additional maps are available, sites will be considered on a case-by-case basis by the Division of Fish Wildlife.

(b) Development that would directly or through secondary impacts on the relevant site or in the surrounding region adversely affect critical wildlife habitats is discouraged, unless:

1. Minimal feasible interference with the habitat can be demonstrated;
2. There is no prudent or feasible alternative location for the development; and
3. The proposal includes appropriate mitigation measures.

(c) The Department will review proposals on a case-by-case basis.

(d) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.40 Public open space**

(a) Public open space constitutes land areas owned or maintained by State, Federal, county and municipal agencies or private groups (such as conservation organizations and homeowner's associations) and used for or dedicated to conservation of natural resources, public recreation, visual or physical public access or, wildlife protection or management. Public open space also includes, but is not limited to, State Forests, State Parks, and State Fish and Wildlife Management Areas, lands held by the New Jersey Natural Lands Trust (N.J.S.A. 13:1B-15.119 et seq.), lands held by the New Jersey Water Supply Authority

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(N.J.S.A. 58:1B-1 et seq.) and designated Natural Areas (N.J.S.A. 13:1B-15.12a et seq.) within DEP-owned and managed lands.

(b) New or expanded public or private open space development is encouraged at locations compatible or supportive of adjacent and surrounding land uses.

(c) Development that adversely affects existing public open space is discouraged.

(d) Development within existing public open space is conditionally acceptable, provided that the development is consistent with the character and purpose of public open space, as described by the park master plan when such a plan exists.

(e) Development in Atlantic City is acceptable within existing public open space provided the public open space is a street right-of-way or the Boardwalk and the development meets the standards of N.J.A.C. 7:7E-3.49(e) through (j).

(f) Provision of barrier free access to public open space is encouraged.

(g) All new development adjacent to public open space will be required to provide an adequate buffer area and to comply with the Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13). The buffer required will be dependent upon adjacent land uses and potential conflicts between users of public open space and the proposed adjacent land use.

(h) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-3.41 Special hazard areas**

(a) Special hazard areas include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas, potential evacuation zones and areas where hazardous substances as defined at N.J.S.A. 58:10-23.11b-k are used or disposed, including adjacent areas and areas of hazardous material contamination.

(b) Coastal development, especially residential and labor-intensive economic development, within special hazard areas is discouraged. All development within special hazard areas must include appropriate mitigating measures to protect the public health and safety.

(c) Approvals from the Department's Division of Solid and Hazardous Waste shall be obtained prior to the commencement of any hazardous substance investigations or clean-up activities at contaminated sites.

(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-3.42 Excluded Federal lands**

(a) Excluded Federal lands are those lands, the use of which is, by law, subject solely

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to the discretion of or held in trust by the Federal Government, its officers or agents.

These lands are excluded from the coastal zone as required by Section 304 of the Federal Coastal Zone Management Act.

1. The list of excluded Federal lands is found in the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 370.

(b) Federal actions on excluded Federal lands that affect any land or water use, or natural resource of the coastal zone shall be consistent with the Coastal Zone Management rules to the maximum extent practicable. The effects on the land or water use or natural resource maybe direct, indirect, cumulative, secondary or reasonably foreseeable effects.

(c) Rationale: See note at the beginning of this Chapter.

### **7:7E-3.43 Special urban areas**

(a) Special urban areas are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D-178) qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. Under N.J.S.A. 52:27D-178 et seq., the Department of Community Affairs (DCA) establishes a list of qualifying municipalities each fiscal year. DCA's list of qualifying municipalities may be obtained on request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.

(b) Development that will help to restore the economic and social viability of special urban areas is encouraged. Development that would adversely affect the economic well being of these areas is discouraged, when an alternative which is more beneficial to the special urban areas is feasible. Development that would be of economic and social benefit and that serves the needs of local residents and neighborhoods is encouraged.

(c) Housing, hotels, motels and mixed use development, which is consistent with the Public Access to the Waterfront rule (N.J.A.C. 7:7E-8.11) and the Hudson River Waterfront Area rule (N.J.A.C. 7:7E-3.48) where applicable, including those provisions relating to fishing access as appropriate are acceptable only over large rivers where water dependent uses are demonstrated to be infeasible. These uses are conditionally acceptable on structurally sound existing pilings, or where at least one of the following criteria is met:

1. Where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in either the same or other nearby location;
2. Where structurally sound existing pilings have been reconfigured, provided that the total area of water coverage is not increased and that fisheries resources are not adversely impacted; or
3. Where expansion of the existing total area water coverage has occurred, provided that it can be shown that extensions are functionally necessary for water dependent uses. For example, additional piers and pilings would be conditionally acceptable for a marina which is a water dependent use.

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(d) Housing, hotels, motels and mixed use development are acceptable in filled water's edge areas, provided that development is consistent with the filled water's edge rule at N.J.A.C. 7:7E-3.23 and public access is provided for, as required by the public access to the waterfront rule at N.J.A.C. 7:7E-8.11.

(e) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area**

(a) The Pinelands National Reserve includes those lands and water areas defined in the National Parks and Recreation Act of 1978, Section 502 (P.L. 95-625), an approximately 1,000,000 acre area ranging from Monmouth County in the north, south to Cape May County and from Gloucester and Camden County on the west to the barrier islands of Island Beach State Park and Brigantine Island along the Atlantic Ocean on the east (see Appendix, Figure 10, incorporated herein by reference). The "Pinelands Area" is a slightly smaller area within the Pinelands National Reserve. It was designated for State regulation by the Pinelands Protection Act of 1979 (N.J.S.A. 13:18-1 et seq.). The Pinelands Commission adopted a Comprehensive Management Plan in November, 1980. Within the Pinelands Area, the law delineates a Preservation Area, where the plan shall "preserve an extensive and contiguous area of land in its natural state, thereby insuring the continuation of a Pinelands environment ..." (Section 8c).

1. Under the authority of the Department's Surface Water Quality Standards (N.J.A.C. 7:9B), all surface waters within the boundaries of the Pinelands Area, except those waters designated as FWI, are designated "Pinelands Waters" which have special antidegradation policies, designated uses and water quality criteria (see N.J.A.C. 7:9B1-4, 1.5(d)6ii, 1.12(b), and 1.14(b)). The Department's present Groundwater Quality Standards (N.J.A.C. 7:9-6), which were adopted on March 3, 1981, and revised on February 1, 1993, identify the "Central Pine Barrens Area" as the only part of the Pinelands distinguished from the rest of the State (N.J.A.C. 7:9-6.7(c)).

2. The coastal municipalities wholly or partly within the Pinelands National Reserve Area include:

##### Atlantic County

Brigantine City

Corbin City

Egg Harbor City

Egg Harbor Township

Estell Manor Township

Galloway Township

Hamilton Township

Mullica Township

Port Republic

Somers Point City

Weymouth Township

##### Burlington County

Bass River Township

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Washington Township

Cape May County

Dennis Township

Middle Township

Upper Township

Woodbine Borough

Cumberland County

Maurice River Township

Ocean County

Barnegat Township

Beachwood Borough

Berkeley Township

Dover Township

Eagleswood Township

Lacey Township

Lakehurst Borough

Little Egg Harbor Township

Manchester Township

Ocean Township

South Toms River Borough

Stafford Township

Tuckerton Borough

(b) Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.).

1. Within the Pinelands National Reserve, the Pinelands Commission will serve as a reviewing agency for coastal construction permit applications.

2. The Department's Land Use Regulation Program and the Pinelands Commission will coordinate the permit review process through the procedure outlined in the February 8, 1988 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. Copies are available from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.

(c) Coastal activities in areas under the jurisdiction of the Pinelands Commission shall not require a freshwater wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials in freshwater wetlands and/or State open waters shall require a State permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977, or under an individual or statewide general permit program administered by the State under the provisions of 33 USC 1344 and N.J.S.A. 13:9B-6(b).

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(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-3.45 Hackensack Meadowlands District**

(a) The "Hackensack Meadowlands District" is a 19,730 acre area of water, coastal wetlands and associated uplands designated for management by a State-level agency known as the New Jersey Meadowlands Commission, by the Hackensack Meadowlands Reclamation and Development Act of 1968 (N.J.S.A. 13:17-1 et seq.). See Figure 20.

(b) The New Jersey Meadowlands Commission will act as the lead coastal planning and management agency within this Special Area. The New Jersey Meadowlands Commission Master Plan Zoning Rules (N.J.A.C. 19:4) are adopted as part of the Coastal Management Program (see Appendix I) and the Hackensack Meadowlands District is designated a Geographic Area of Particular Concern (see the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 263). The Department will periodically review Commission actions and will consider incorporating any proposed changes in New Jersey Meadowlands Commission plans or policies into the Coastal Management Program with particular attention to continued protection of wetlands and other environmental resources.

(c) Coastal activities under the jurisdiction of the New Jersey Meadowlands Commission shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Federal Clean Water Act of 1977, or under an individual or general permit program administered by the State under the provisions of the Federal Act and applicable State laws.

(d) Rationale: See note at the beginning of this Chapter.

#### **7:7E-3.46 Wild and Scenic River Corridors**

(a) Wild and scenic river corridors are all rivers designated into the National Wild and Scenic Rivers System and any rivers or segments thereof being studied for possible designation into that system pursuant to the National Wild and Scenic Rivers Act (16 U.S.C. 1271-1278). For rivers designated into the national system, the wild and scenic river corridor shall include the river and adjacent areas located within one-quarter mile from the mean high water line on each side of the river until a Federal River Management Plan has been adopted, after which time the wild and scenic corridor shall be the area defined in the adopted plan. For rivers under study for possible designation into the national system, the wild and scenic river corridor shall include the river and adjacent areas extending one-quarter mile from the mean high water line on each side of the river.

(b) Development in wild and scenic river corridors shall comply with (b)1 and 2 below, and the standards for the specific type of development at (c), (d), (f), (g) and (h) below. The standards for linear development are found at (e) below.

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1. Development that would have a direct and adverse effect on any “outstandingly remarkable resource value” for which the river was designated or is being studied for possible designation into the National Wild and Scenic Rivers System is prohibited. For the purposes of this rule, “outstandingly remarkable resource values” means any of those extraordinary scenic, recreational, cultural, historical, or fish and wildlife attributes of a river corridor which, under the National Wild and Scenic Rivers Act, are required to be preserved and protected for the benefit and enjoyment of future generations.

2. The development shall comply with the standards set forth in the Federal River Management Plan adopted pursuant to the National Wild and Scenic Rivers Act for the wild and scenic river corridor if a plan exists.

(c) Development of docks, piers, and moorings on the Great Egg Harbor River and Maurice River and their tributaries shall comply with the following:

1. A dock, pier or mooring shall not extend to a depth greater than two feet at mean high water or further than 20 percent of the river width, as measured from mean high water line on one side of the river to the mean high water line on the opposite side of the river, whichever is less.

2. On the Great Egg Harbor River and Maurice River, development of a dock, pier or mooring within 75 feet of the edge of a navigation channel, as defined at N.J.A.C. 7:7E-3.7, is prohibited.

3. On the tributaries to the Great Egg Harbor River and Maurice River, development of a dock, pier or mooring within 25 feet of the edge of a navigation channel, as defined at N.J.A.C. 7:7E-3.7, is prohibited.

(d) Where the need for shoreline stabilization has been demonstrated, biostabilization of eroding shorelines shall be used where feasible. These systems include live branch cuttings, live facings, live stakes, vegetative cuttings, vegetated earth buttresses, choir fiber products, fiber plugs, plants, fiber pallets, fiber carpet, and wood stake anchor systems. These materials shall be installed in accordance with the construction guidelines of Chapter 16 “Streambank and Shoreline Stabilization Protection,” of the National Engineering Handbook (NEH), Part 650, 1996, published by the United States Department of Agriculture, herein incorporated by reference as amended and supplemented. This document is available on the web at [www.NTIS.gov](http://www.NTIS.gov) for a fee (order PB98114358). Standards for structural shore protection are found at N.J.A.C. 7:7E-7.11.

(e) Linear development shall be located within the right of way of an existing linear development route or outside of the wild and scenic river corridor where feasible. Where an analysis of alternatives demonstrates that proposed development which is in the public interest can not be so located, the linear development shall be located and designed to minimize adverse effect on outstandingly remarkable resource values and the width of the clearing for the linear development shall be minimized.

(f) Communication and cellular towers are prohibited in a wild and scenic river corridor.

(g) Development of bridges is conditionally acceptable provided it complies with the



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following:

1. The structure spans the entire width of the water body, and has no associated structures located below the mean high water line, unless it is demonstrated that such a structure is not feasible;
2. The bridge is non-obtrusive, including siting, design and materials, all of which are in character with the surrounding development;
3. A vertical clearance of five feet is maintained between the elevation of the water body at mean high water and the lowest structural member of the bridge where the water depth is greater than two feet at mean high water;
4. A single crossing is used where feasible;
5. There is no reduction of the total width and volume of the water body passing under the bridge;
6. The water body is crossed by a method which minimizes disruption to the bottom of the water body; and
7. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

(h) Development of culverts is conditionally acceptable provided it complies with the following:

1. A natural streambed is provided through either the use of a bottomless structure or by recessing the culvert bottom a minimum of 12 inches below the bottom of the water body;
2. There is no reduction of the total pre-construction width and volume of the water body passing through the culvert; and
3. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

(i) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-3.47 Geodetic control reference marks**

(a) Geodetic control reference marks are traverse stations and benchmarks established or used by the New Jersey Geodetic Control Survey pursuant to P.L. 1934, c.116. They include the following types:

1. Monument-(Mon), Disk-(DK): A standard United States Coast and Geodetic Survey or New Jersey Geodetic Control Survey disk set in a concrete post, pavement, curb, ledge rock, etc., stamped with a reference number, and used for both horizontal and vertical control.
2. Point (Pt.): A State highway, tidelands (riparian), city, etc. survey marker represented by a chiseled cross, punch hole, brass plug, etc. used for horizontal and vertical control. These stations are not marked, but if there should be an enclosing box, the rim is stamped with a number.
3. Rivet-(Rv.): A standard metal rivet set by the New Jersey Geodetic Control Survey, used for vertical control.
4. Mark-(Mk.): Same as point, but used only for vertical control. In the description of such marks there should appear a mark number followed by an equality sign and then

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the original name or elevation of the bench mark, and in parentheses the name of the organization which established the mark.

(b) The disturbance of a geodetic control reference mark is discouraged. When a geodetic control reference mark must be moved, raised or lowered to accommodate construction, the New Jersey Geodetic Control Survey shall be contacted at least 60 days prior to disturbance, and arrangements shall be made to protect the position. If the position can not be protected, it may be altered in position after approval by the New Jersey Geodetic Control Survey and under the supervision of a licensed professional engineer or land surveyor using standard methods. Copies of field notes and instruments, tape, and rod specifications including calibration data, shall be submitted to the New Jersey Geodetic Control Survey.

(c) Rationale: See the note at the beginning of this Chapter.

### **7:7E-3.48 Hudson River Waterfront Area**

(a) The following terms, when used in this section, shall have the following meanings:

1. "Average building height" is defined as the mean height of the roof line of a building on a pier measured from the pier deck level to the top of the parapet or the midpoint of a sloped roof above pier deck level.

2. "The Hudson River Waterfront Area" extends from the George Washington Bridge in Fort Lee, Bergen County to the Bayonne Bridge in Bayonne, Hudson County, inclusive of all land within the municipalities of Bayonne, Jersey City, Hoboken, Weehawken, West New York, Guttenberg, North Bergen, Edgewater and Fort Lee subject to the Waterfront Development Law.

3. "Landward end of pier" means the end of the pier at its point of attachment to the upland.

4. "Pier" means a pile supported, decked structure extending from upland over water. The longest axis of a pier is generally perpendicular to the shoreline. See "platform" below.

5. "Pier deck level" means the lowest deck surface that is at or above base flood elevation (the water surface elevation of a 100-year flood as defined by the Federal Emergency Management Agency).

6. "Platform" means a pile supported, decked structure extending from upland over water. The longest axis of a platform is generally parallel to the shoreline. See "pier" above.

7. "Walkway" means areas along the waterfront, including areas on piers, that are devoted to activities by the public such as but not limited to walking, jogging and bicycle riding.

8. "Waterward end of pier" means the end of a pier most distant from its point of attachment to the upland.

(b) Non-industrial development within the Hudson River Waterfront Area shall conform with the criteria as set forth in (d) below, which govern allowable building height, massing and public access. Industrial development, including water dependent

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transportation (passenger and vehicular) and cargo handling facilities, shall conform with the criteria to the extent practical consistent with public safety and the operational requirements of such facilities.

(c) Hudson River Waterfront Area development shall be consistent with all other applicable Coastal Zone Management rules with particular attention given to N.J.A.C. 7:7E-3.38, Public open space, N.J.A.C. 7:7E-3.39 Special hazards areas, N.J.A.C. 7:7E-3.41 Special urban area, N.J.A.C. 7:7E-7.14 High rise structures, N.J.A.C. 7:7E-8.11 Public Access to the Waterfront, N.J.A.C. 7:7E-8.12 Scenic Resources and Design, and N.J.A.C. 7:7E-8.4 Water Quality.

(d) The following standards apply to all developments proposed on piers and will be used by the Department as a guide for developments proposed on platforms. In some cases, a platform may, in effect, function as upland and, thus, be more appropriately reviewed under rules that regulate upland development.

1. Non-industrial development upon piers is conditionally acceptable provided that specific amounts of usable landscaped public open space are incorporated into the project, as provided below:

- i. The minimum length of public open space at the landward end of a pier required for any building less than or equal to 40 feet in average height shall be 20 feet;
- ii. The minimum length of public open space at the landward end of a pier required for any building above 40 feet in average height shall be computed as follows:

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For example:

Average Height	Minimum Landward Open Space Length
80 feet	60 feet
70 feet	42.5 feet
60 feet	30 feet
50 feet	22.5 feet
40 feet	20 feet

iii. The minimum length of distal public open space at the waterward end of a pier required for any building less than or equal to 40 feet in average height shall be 20 feet;

iv. The minimum length of public open space at the waterward end of a pier required for any building above 40 feet in average height shall be computed as follows:

For example:

Average Height	Minimum Waterward Open Space Length
80 feet	120 feet
70 feet	76 feet
60 feet	45 feet
50 feet	26 feet
40 feet	20 feet

v. The area of public open space at the ends of piers required by this section shall be the minimum length times the width of the pier. The public open space areas do not have to occupy the entire width of the pier for the full minimum length required, and do not have to be entirely at pier deck level, provided the following criteria are satisfied:

(1) Public open space at each pier end, that covers the full width of the pier, shall be at least 20 feet in length or 70 percent of the minimum length, as determined above at (d)1i through iv above, whichever is greater;

(2) The remaining area of public open space (up to 30 percent of the minimum length times the average width of the pier) must be contiguous with the public open space at the end of the pier; and

(3) Up to 50 percent of the public open space at pier ends may be elevated up to 12 feet above pier deck level provided that easy access is provided between elevated and pier deck level public open space areas, for able bodied and disabled people;

vi. At least one public access walkway of at least 16 feet in width shall be provided along the entire length of a pier, from the waterward end to the landward end at the point at which it abuts the Hudson River Waterfront Walkway. All such walkways shall be at pier deck level or ramped so that disabled access is provided between the public open space areas at both ends of a pier;

vii. Where piers are less than 400 feet apart, the heights, as allowed by this section, shall be further reduced by 20 percent for each pier. No reduction of open space will be allowed as a result of this height reduction; and

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viii. Development that reuses existing structures on piers shall comply with the above criteria to the maximum practical extent; and

ix. All pier structures shall conform with applicable Federal flood hazard reduction standards as found in 44 C.F.R. Part 60 and in the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.

(e) All waterfront development along the Hudson River shall develop, maintain and manage a section of the Hudson Waterfront Walkway coincident with the shoreline of the development property. The developer shall, by appropriate instrument of conveyance, create a conservation easement in favor of the Department. The conservation easement shall define the physical parameters of the walkway and the allowable uses, address the maintenance and management duties and identify the responsible party. Development of each project's public access system shall conform to this special area policy and to the Hudson Waterfront Walkway Planning and Design Guidelines (1984) and the Hudson Waterfront Walkway Design Standards (1989), subject to the following clarification:

1. With the exception of water dependent industrial uses, all Hudson River pier development shall provide unrestricted, landscaped public access as required by (d) above. Public access on piers shall be on a 24-hour basis, but the Department will consider requests to limit access late at night if the applicant submits an enforceable agreement to ensure that access will be maintained for the agreed upon hours. Public access to the main route of the Hudson Waterfront Walkway shall be on a 24-hour basis.

2. Water dependent industrial piers shall provide linear public access and/or public access observation nodes as feasible, consistent with public safety.

3. Within all public access corridors and public open space areas on piers, pedestrians shall have a declared right of way over vehicles. Public access corridors may be used for emergency vehicular access, but shall not serve as service or general vehicular roadways. All instances of vehicular/pedestrian crossing shall be designated to assure motorists are aware they are crossing a pedestrian right of way. Stop signs, speed bumps and similar design techniques shall be used as necessary.

(f) Applications which vary in detail from the standards of this rule are discouraged, but will be considered for approval if they would provide greater public access and/or protection of natural or scenic resources than would be afforded by strict compliance with this rule. Applicants proposing a development which varies in detail from the standards of this rule are encouraged to contact the Department for guidance when conceptual plans have been prepared.

#### **7:7E-3.49 Atlantic City**

(a) Atlantic City is those lands within the municipal boundary of the City of Atlantic City.

(b) "Casino hotels" are hotels with casinos as provided for in the Casino Control Act (P.L. 1977, c.100, as amended).

1. Casino hotel development in Atlantic City shall be located in the city's traditional resort area (along the Boardwalk), and in the State Marina area to the maximum extent practicable. For the purpose of this section, the State Marina area is the area bounded by

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Clam Creek, Absecon Inlet, Clam Thorofare, Penrose Canal, Absecon Boulevard, Huron Avenue, and Maryland Avenue to Magellan Avenue, across Delta Basin.

i. Casino hotel development is discouraged in existing residential areas and in areas where access by public transportation between the proposed hotel-casino and the Boardwalk is limited.

ii. Casino hotel development is discouraged along the access highways to Atlantic City that is, along the entire Atlantic City Expressway, Route 40 north and west of Beach Thorofare and Route 30 northwest of Penrose Canal.

iii. Casino development is encouraged in Atlantic City to ensure that the objectives of the 1976 constitutional referendum on casino gambling, including the stimulation of new construction and the revitalization of Atlantic City and its region, are achieved.

(c) The following standards apply to all development proposed on or over the existing ocean piers listed at (c)1 below.

1. Existing ocean piers (piers) are limited to the footprint of the following five piers, as depicted on the Department's 1995-1997 National Aerial Photographic Program imagery (GIS):

i. Garden Pier;

ii. Steel Pier;

iii. Steeplechase Pier, except that Steeplechase Pier may be connected to the Boardwalk provided the connecting portion of the pier does not exceed the width of the existing Steeplechase Pier;

iv. Central Pier; and

v. Million Dollar Pier (Ocean One).

2. Residential development is prohibited on the existing ocean piers except where a waiver of strict compliance with the municipal flood damage prevention ordinance has been granted by the Federal Emergency Management Agency for a hotel to be located over the water.

3. The development proposed on the pier must have an evacuation plan approved by the Atlantic City Office of Emergency Management.

4. A minimum of 50 percent of the total floor area of any building constructed on the pier shall be devoted to publicly accessible, non-casino entertainment and recreation.

5. The height of the structures on the pier shall not exceed 100 feet above the deck surface of the Boardwalk, except for decorative architectural elements and amusement rides which shall not exceed 200 feet. There shall be no occupancy above the 100 foot elevation.

6. The height of the structures on the pier shall not exceed 50 feet above the deck surface of the Boardwalk within 100 feet of the property line in common with the Boardwalk.

7. A building setback of 50 feet shall be maintained from the seaward end of the pier. If a building is 50 feet or more in height, an additional 20 feet setback from the seaward end of the pier is required.

8. Public access shall be provided in accordance with all of the following:

i. The development shall provide a means for pedestrians to walk along the dry beach under the pier from one side to the other, except where the beach is so narrow as to preclude such passage;

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ii. A stairway shall be provided from the pier to the beach and from the Boardwalk to the beach on the southwesterly side of the pier, where the pier intersects the Boardwalk and, on the northeasterly side of the pier, either where the pier intersects the Boardwalk or on the Boardwalk within 50 feet of the point at which the pier intersects the Boardwalk;

iii. Publicly accessible open space, including lighted public seating and viewing and, where appropriate, fishing areas, shall be provided at the seaward end of the pier at the level of the deck surface of the Boardwalk. The publicly accessible open space shall occupy the entire width of the pier (parallel to the ocean shoreline in a northeast-southwest direction) for a distance of 50 feet landward from the end of the pier. The area between 30 and 50 feet inland from the end of the pier may be occupied by outdoor dining and food concessions and be partially enclosed, through the use of awnings, canopies, and windbreaks. No other structures shall be placed in this area;

iv. The public open space shall have unrestricted access, at no cost, and shall not be limited to patrons of the commercial or hotel facilities;

v. An open-air public access walkway of at least 18 feet in width shall be provided perpendicular to the Boardwalk, along the entire southwestern side of the pier at the level of the deck surface of the Boardwalk, with amenities such as seating and lighting. Servicing of buildings and storage of materials, refuse or any other obstructions are prohibited within this walkway;

vi. An open-air public access walkway of at least 12 feet in width shall be provided perpendicular to the Boardwalk, along the entire northeastern side of the pier at the level of the deck surface of the Boardwalk, with amenities such as seating and lighting. Servicing of buildings and storage of materials, refuse or any other obstructions are prohibited within this walkway;

vii. Public restrooms, showers and changing areas shall be provided on the pier, immediately adjacent to the Boardwalk and the stairs from the beach on either side of the pier. Alternatively, the public restrooms, showers and changing areas may be located immediately adjacent to the Boardwalk provided these facilities are:

(1) Owned and maintained by the pier owner; and

(2) Located no further than 200 linear feet from the pier; and

viii. Signage shall be provided along the Boardwalk at the entrance to the piers indicating the location and availability of the public access features listed in (c)8i through vii above.

9. Service corridors to the piers shall be located beneath the Boardwalk, or if service to the piers is to be provided over the Boardwalk, it shall be restricted to the period between 12 o'clock midnight and 8:00 A.M.

10. The size and spacing of the pilings necessary to support the proposed development on the piers shall comply with the following conditions:

i. The pilings shall not cause significant adverse long-term impact to natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities;

ii. The pilings shall not cause significant adverse impacts to the local sediment supply;

iii. The pilings shall not create net adverse shoreline sand movement downdrift, including erosion or shoaling; and

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iv. Pilings shall be spaced so as to provide linear access along the dry beach as required by (c)8i above.

11. Parking is prohibited on the piers.

(d) The construction of new commercial piers or expansion of existing commercial piers is prohibited, unless the pier is associated with a marina which meets the Resort Recreational Use rule, N.J.A.C. 7:7E-7.3, and the Marina Development Standards at N.J.A.C. 7:7E-7.3A or meets the standards at N.J.A.C. 7:7E-3.49(c).

(e) The following standards apply to all development proposed in the Boardwalk right-of-way as defined at (e)1 below:

1. For the purposes of this subsection, Boardwalk right-of-way means the shore-parallel promenade located immediately adjacent to the ocean and inlet beach occupying a 20 foot right-of-way from Jackson Avenue to Roosevelt Place, a 40 foot right-of-way from Roosevelt Place to Bellevue Avenue, a 60 foot right-of-way from Bellevue Avenue to Rhode Island Avenue, a 40 foot right-of-way from Rhode Island Avenue to Atlantic Avenue, and a 20 foot right-of-way from Atlantic Avenue to Caspian Avenue as shown on the 1999 Atlantic City tax duplicate.

2. Elevated pedestrian bridges are acceptable provided they meet the criteria of (e)2i through vi below:

i. The elevated pedestrian bridge shall be designed and used only for pedestrian movement and shall not provide for or be used for vehicular traffic, commercial space, storage or advertisement, either attached to or positioned within the elevated pedestrian bridge;

ii. The lowest portion of the elevated pedestrian bridge shall be elevated a minimum of 14 feet six inches above the deck surface of the Boardwalk;

iii. The elevated pedestrian bridge shall be a maximum of 20 feet wide and 15 feet high;

iv. The elevated pedestrian bridge shall be transparent with the exception of the support structure;

v. The elevated pedestrian bridge shall connect to an existing pier as defined at (c)1 above; and

vi. There shall be no more than one pedestrian bridge per existing pier.

3. Awnings, canopies, marquees, and other roof extensions are acceptable provided they meet the criteria of (e)3i through iii below:

i. The structure is not enclosed;

ii. The structure extends no more than 12 feet into the Boardwalk right-of-way; and

iii. There is an eight-foot clearance between the structure and the deck surface of the Boardwalk.

4. Signs which are not awnings, canopies, marquees or other roof extensions are acceptable provided they meet the criteria of (e)4i through iii below:

i. The structure is not enclosed;

ii. The structure extends no more than 12 feet into the Boardwalk right-of-way; and

iii. There is a 14 foot six inch clearance between the structure and the deck surface of the Boardwalk.



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5. Any development that does not meet the standards in (e)2, 3 or 4 above is prohibited.

(f) Development is prohibited in the street rights-of-way listed in (f)1 and 2 below as shown on the 1999 Atlantic City tax duplicate, and in the street right-of-way listed in (f)3 below, with the exception of signage extending no more than four feet into the street right-of-way and located a minimum of 14 feet six inches above the surface of the sidewalk and of below-grade utilities, roads, sidewalks, public stairs and ramps providing access to the Boardwalk and mitigation pursuant to (j) below.

1. That portion of the following streets located southeast of Pacific Avenue:

- i. Sovereign Avenue (50 foot right-of-way);
- ii. Montpelier Avenue (60 foot right-of-way);
- iii. Iowa Avenue (72 foot right-of-way);
- iv. Missouri Avenue (50 foot right-of-way);
- v. Kentucky Avenue (50 foot right-of-way);
- vi. Tennessee Avenue (60 foot right-of-way); and
- vii. Rhode Island Avenue (50 foot right-of-way);

2. That portion of the following streets located northeast of Rhode Island Avenue:

- i. Atlantic Avenue (100 foot right-of-way);
- ii. Pacific Avenue (60 foot right-of-way); and
- iii. Grammercy Place (60 foot right-of-way);

3. That portion of Albany Avenue (60 foot right-of-way) located southeast of Pacific Avenue as shown on the 1999 Atlantic City tax duplicate or an alternative alignment with a minimum 60 foot right-of-way approved by the Department which provides a comparable view corridor to the ocean and horizon.

(g) Development is acceptable southeast of Pacific Avenue in or over the right-of-way of a street listed in (g)1 through 6 below as shown on the 1999 Atlantic City tax duplicate provided that it either meets the standards of (g)7 and 8 below or of (i) below.

1. Chelsea Avenue (60 foot right-of-way);
2. Texas Avenue (50 foot right-of-way);
3. Florida Avenue (50 foot right-of-way);
4. Martin Luther King, Jr. Boulevard (50 foot right-of-way);
5. South Carolina Avenue (50 foot right-of-way);
6. New Hampshire Avenue (50 foot right-of-way);

7. A corridor 50 feet in height and 50 feet in width, except 60 feet in width for Chelsea Avenue, shall be maintained at street level within the street right of way between Pacific Avenue and the Boardwalk. The entire corridor shall be unenclosed, entirely devoid of structures, maintain views to the Boardwalk and allow unrestricted physical access to the public.

8. Mitigation is provided in accordance with (j) below.

(h) Development is acceptable in or over the right-of-way of any street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue and not listed in (f) or (g) above provided that it meets the standards of (i) below or mitigation is provided in accordance with (j) below.

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(i) The following may be constructed without mitigation in or over the right-of-way of an existing street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue and not listed in (f) above:

1. Elevated pedestrian bridges are acceptable provided they meet the criteria of (i)1i and ii below:

i. The elevated pedestrian bridge meets the standards at (e)2i through iv above; and

ii. The elevated pedestrian bridges shall be no closer to one another than 1,000 feet, as measured along the street right-of-way;

2. Awnings, canopies, marquees, and other roof extensions are acceptable provided they meet the criteria of (i)2i through iii below:

i. The structure is not enclosed;

ii. The structure extends no more than 8 feet into the street right-of-way; and

iii. There is an eight-foot clearance between the structure and the surface of the sidewalk;

3. Signs which are not awnings, canopies, marquees, or other roof extensions are acceptable provided they meet the criteria of (i)3i through iii below:

i. The structure is not enclosed;

ii. The structure extends no more than eight feet into the street right-of-way; and

iii. There is a 14 foot six inch clearance between the structure and surface of the sidewalk; and

4. Below-grade utilities, roads, sidewalks, and public stairs and ramps providing access to the Boardwalk approved as mitigation under (j) below.

(j) Mitigation shall be provided for development within the right-of-way of a street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue, except for those developments listed in (i) above, in accordance with the following:

1. The amount to be paid in mitigation shall be calculated as follows:

i. For development within a street right-of-way at grade, or below a height of 14 feet six inches above grade, the amount of mitigation is five times the property tax on the assessed value of the right-of-way area to be developed. The assessed value is an average of the value of the land on both sides of the area to be developed; and

ii. For development within a street right-of-way at a height of 14 feet six inches or greater above grade, the amount of mitigation is three times the Atlantic City tax on the assessed value of the right-of-way area to be covered by development. The assessed value is an average of the value of the land on both sides of the right-of-way area to be covered by development;

2. Mitigation monies shall be paid in full to the Casino Reinvestment and Development Authority prior to the commencement of construction; and

3. Mitigation monies paid to the Casino Reinvestment and Development Authority in accordance with (j)1 and 2 above, shall be designated only for acquisition and/or improvement of lands for public access and public parks along the oceanfront and inlet. If the money is used for these improvements within a street-end, the money shall be used only in a street-end listed in (f) above.

(k) Standards relevant to intercept parking are as follows:

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1. Each hotel-casino facility located in Atlantic City shall provide one of every five non-Absecon Island and non-Brigantine Island resident hotel-casino employees commuting during the daily peak hour with an intercept space. Absecon Island residents are residents of Atlantic City, Margate, Ventnor and Longport. Brigantine Island residents are residents of the City of Brigantine. Non-Absecon Island and non-Brigantine Island resident employees commuting during the daily peak hour is the sum of the number of non-Absecon Island and non-Brigantine Island resident employees of the shift with the largest number of employees plus the number of non-Absecon Island and non-Brigantine Island resident employees of the next largest adjoining shift. This intercept parking space shall be located off Absecon and Brigantine Islands, specifically outside of the municipal boundary of the five municipalities identified above. If off-island sites are not available, temporary use of other sites is conditionally acceptable if an applicant can demonstrate that it will be moved to an off-island site within one year.

2. Alternatives that would reduce vehicle miles traveled and peak hour employee travel demand may be substituted for the employee intercept parking space requirements for casino facilities. The Department will review proposed alternatives in consultation with the Department of Transportation. The Department will approve alternatives, which it determines will reduce vehicle miles traveled and peak-hour employee travel by at least as much as would result from furnishing intercept parking as described above. Acceptable alternatives include, but are not limited to, employee subsidies for bus, rail transit, van pools, and/or bicycle programs.

3. Alternative scheme proposals must include documentation indicating the existing travel pattern and mode of travel characteristics of non-Absecon and non-Brigantine Island resident employees. This information shall be provided to the Department along with the necessary data used to establish the vehicle miles traveled and peak hour employee travel demand with and without the proposed peak hour traffic reduction program. All proposals shall include a monitoring program to be submitted to the Department to verify the success of the proposed traffic reduction program, update the employee travel characteristics pattern, and serve as a basis for future adjustments if necessary.

(l) Development in Atlantic City shall be constructed in conformance with this section and with all other applicable provisions in this chapter.

## **SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES**

### **7:7E-3A.1 Purpose and scope**

(a) This subchapter sets forth the standards applicable to routine beach maintenance, emergency post-storm restoration, dune creation and maintenance, and construction of boardwalks. These standards are reference at N.J.A.C. 7:7E-3.16, Dunes; N.J.A.C. 7:7E-3.17, Overwash areas; N.J.A.C. 7:7E-3.19, Erosion hazard areas; N.J.A.C. 7:7E-3.22, Beaches; and N.J.A.C. 7:7E-7.11, Coastal engineering. In addition, N.J.A.C. 7:7E-3A.2, 3A.3 and 3A.4 are the standards for the coastal general permit for beach and dune maintenance activities, N.J.A.C. 7:7-7.6.

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1. The standards applicable to routine beach maintenance, including debris removal and clean-up; mechanical sifting and raking; maintenance of access ways; removal of sand from street ends; boardwalk promenades and residential properties; repairs or reconstruction of existing gazebos and dune walkover structures, and limited sand transfers from the lower beach to the upper beach or alongshore are found at N.J.A.C. 7:7E-3A.2;

2. The standards that apply to the restoration of all beaches that are impacted by coastal storms with a recurrence interval to or exceeding a five-year storm event are found at N.J.A.C. 7:7E-3A.3;

3. The standards for dune creation and maintenance including the placement and/or repair of sand fencing, the planting and fertilization of appropriate dune vegetation, the maintenance and clearing of beach access pathways less than 8 feet in width; and the construction or repair of approved dune walkover structures are found at N.J.A.C. 7:7E-3A.4; and

4. The standards for construction of boardwalks along tidal shorelines are found at N.J.A.C. 7:7E-3A.5.

#### **7:7E-3A.2 Standards applicable to routine beach maintenance**

(a) Routine beach maintenance includes debris removal and clean-up; mechanical sifting and raking; maintenance of accessways; removal of sand from street ends, boardwalks/promenades and residential properties; the repair or reconstruction of existing boardwalks, gazebos and dune walkover structures; and limited sand transfers from the lower beach to the upper beach or alongshore (shore parallel). Sand transfers from the lower beach profile to the upper beach profile are specifically designed to restore berm width and elevation, to establish/enhance dunes and to repair dune scarps. Activities which preclude the development of a stable dune along the back beach are not considered to be routine beach maintenance activities, pursuant to this section. Specifically, the bulldozing of sand from the upper beach (berm) to the lower beach (beach face), for the purpose of increasing the berm width or flattening the beach profile, is not considered to be routine maintenance.

1. If the activities in (a) above are proposed to be conducted by a municipal or county agency on property owned by that governing body, then the municipal or county engineer must certify that the activities will be conducted in accordance with these standards. The appropriate municipal or county engineer is responsible for ensuring compliance with these requirements. If these activities are proposed to be conducted on privately owned property, then the property owner is responsible for ensuring that the activities will be conducted in accordance with these standards. If these activities are proposed to be conducted on State owned properties, then the DEP, Bureau of Construction and Engineering must certify that the activities will be conducted in accordance with these standards.

2. All guidelines and specifications of this section must be incorporated into any contract documents or work orders related to proposed beach and dune activities, as described in this section. The Land Use Regulation Program is available to assist in the development of specific maintenance plans for oceanfront locations, upon request.

3. In areas documented by the Department as habitat for threatened or endangered beach nesting shorebirds such as Piping Plovers (*Charadrius melodus*) and Least Terns

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(*Sterna albifrons*), no beach raking or other mechanical manipulation of the beach shall take place between April 1 and August 15.

i. The Department's Division of Fish and Wildlife shall develop a list of specific areas where this restriction shall apply, based on documented habitat during the most recent nesting season. The list of restricted areas shall be updated annually by the Division of Fish and Wildlife, at the end of each nesting season and be available upon request from the Department's Land Use Regulation Program at PO Box 439, Trenton, New Jersey 08625-0439 (609) 292-0060. The updated list shall be provided by the Department to each permittee prior to April 1 of each year.

ii. If a particular beach area is identified on the updated list as described in (a)3i above as habitat for threatened or endangered beach nesting shorebirds, regardless of the habitat classification of the previous nesting season, no beach raking or other mechanical manipulation of the beach shall take place between April 1 and August 15 in those areas.

iii. If a particular beach area is not identified on the updated list as described in (a)3i above, but is subsequently found to contain a nest of a threatened or endangered beach nesting shorebird, the Department shall notify the permittee and no beach raking or mechanical manipulation of the beach shall take place between April 1 and August 15 in those areas.

iv. The restrictions contained in (a)3 above may be waived if the Department's Division of Fish and Wildlife determines that the identified areas do not represent suitable threatened or endangered beach nesting shorebird habitat, due to beach erosion or other causes. Requests for such a waiver shall be made in writing to the Land Use Regulation Program, PO Box 439, Trenton, New Jersey, 08625-0439; and

4. Mechanical sifting and beach raking shall be limited to recreational beach areas only. For the purposes of this subsection, "recreational beach area" means all areas within 100 yards of a staffed lifeguard stand.

(b) Projects involving the mechanical redistribution of sand from the lower beach profile to the upper beach profile, or alongshore, are acceptable, in accordance with the following standards:

1. The amount of sand transferred at any one time shall be limited to one foot scraping depth at the borrow zone. This borrow zone may not be rescraped until the sand volume from the previous scraping activities has been fully restored.

2. The borrow zone shall be limited to the area between the low water line and the inland limit of the berm. It is strongly recommended that a program of beach profiling be utilized to monitor the condition of the beaches and to ensure compliance with the standards of this section.

3. If the purpose of the sand transfers is to repair eroded dunes (dune scarps), all filled areas shall be stabilized with sand fencing and planted with beach grass in accordance with DEP and/or SCS standards. Fencing shall be in place within 30 days of the transfer operation, while the vegetative plantings may be installed during the appropriate seasonal planting period (October 15 through March 31, anytime the sand is not frozen).

4. There shall be no disturbance to existing dune areas.

5. In areas of documented habitat for threatened or endangered beach nesting shorebirds such as Piping Plovers (*Charadrius melodus*) and Least Terns (*Sterna albifrons*), no sand transfers shall take place between April 1 and August 15.

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i. The Department's Division of Fish and Wildlife shall develop a list of specific areas where this restriction shall apply, based on documented habitat during the most recent nesting season. The list of restricted areas shall be updated annually by the Division of Fish and Wildlife, at the end of each nesting season and be available upon request from the Department's Land Use Regulation Program at PO Box 439, Trenton, New Jersey 08625-0439 (609) 292-0060. The updated list shall be provided by the Department to each permittee prior to April 1 of each year.

ii. If a particular beach area is identified on the updated list as described in (b)5i above as habitat for threatened or endangered beach nesting shorebirds, regardless of the habitat classification of the previous nesting season, no sand transfers shall take place between April 1 and August 15 in those areas.

iii. If a particular beach area is not identified on the updated list as described in (b)5i above, but is subsequently found to contain a nest of a threatened or endangered beach nesting shorebird, the Department shall notify the permittee and no sand transfers shall take place between April 1 and August 15 in those areas.

iv. The restrictions contained in (b)5 above may be waived if the Department's Division of Fish and Wildlife determines that the identified areas do not represent suitable threatened or endangered beach nesting shorebird habitat, due to beach erosion or other causes. Requests for such a waiver shall be made in writing to the Land Use Regulation Program, PO Box 439, Trenton, New Jersey, 08625-0439; and

6. Sand transfers to or from wetland areas that may exist on a beach are not authorized by this permit.

7. Records of all sand transfer activities shall be maintained by the property owner, beach association, governmental agency or other authority conducting the activities, and shall be available for inspection by the Department, upon request. These records shall include, but not be limited to, dates of transfer, borrow area limits, fill area limits, estimates of the amount of sand transferred, the name of the person(s) supervising the transfer activities, and the engineering certification required (if appropriate) for all sand transfer activities.

### **7:7E-3A.3 Standards applicable to emergency post-storm beach restoration**

(a) This section on emergency post-storm beach restoration will apply to all beaches which are impacted by coastal storms with a recurrence interval equal to or exceeding a five-year storm event. Emergency post-storm beach restoration projects not specifically identified in this section may be authorized by the Department through an Emergency Permit authorization pursuant to N.J.A.C. 7:7-1.7 if the Department determines that there is an imminent threat to lives or property.

(b) Beach restoration activities, as part of an emergency post-storm recovery, include: the placement of clean fill material with grain size compatible with (or larger than) the existing beach material; the bulldozing of sand from the lower beach profile to the upper beach profile; the alongshore transfer of sand on a beach; the placement of concrete or rubble; and the placement of sand filled geotextile bags or tubes. The placement of sand filled geotextile bags or tubes is preferred to the placement of concrete, rubble or other material.

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(c) The emergency post-storm beach restoration activities in (b) above should be designed and implemented as a means to restore the beaches to the pre-storm condition, or to restore the beaches to a level sufficient to provide protection from a storm event with a minimum recurrence interval of five years (five-year storm protection). For the purpose of this section, five-year storm protection equates to a minimum 30-foot wide berm at elevation +8 Mean Sea Level (NAD, 1983). Restoration beyond the pre-storm beach condition is encouraged by the Department, but will not be considered "emergency post-storm beach restoration," pursuant to this section.

(d) The bulldozing of sand from the lower beach profile to the upper beach profile, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. Bulldozing is limited to the beach area landward of the low water line. Removal of material from below the low water line is considered dredging, and is not authorized pursuant to this section; and

2. The beach face cannot be graded to a slope steeper than 1:3.

(e) The longshore transfer of sand from one beach area to another, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. No disturbance to existing dune areas is permitted;

2. Sand borrow areas shall not be bulldozed to a depth which exceeds one foot;

3. The borrow areas may not be rescarped until full sand volume recovery has occurred; and

4. An adequate supply of sand is available at the borrow area site, so that the relocation of this material will not decrease the level of protection adjacent to the borrow area.

(f) The placement of sand filled geotextile bags or geotubes, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. In areas where dunes are present, the geotextile bags or geotubes shall be placed along the toe of any scarped dune, or seaward of the dune toe, and not on the dune itself;

2. In areas where dunes are not present, the geotextile bags or geotubes shall be placed at the landward limit of the beach and in no case be placed below the mean high water line;

3. The geotextile bags or geotubes shall be tapered at the end of the project area, to minimize the impact to adjacent areas which are not protected by the geotextile bags or geotubes;

4. The crest and seaward side of the geotubes shall be buried to achieve a gradual, uniform slope from the upper beach to the crest of the geotextile bag or geotube;

5. The length of shoreline along which the geotextile bags or geotubes are installed shall not exceed a cumulative length of 500 feet;

6. Fill material for the geotextile bags or geotubes shall be from an upland source, excluding the beach and dune; and

7. The geotextile bag or geotube shall be installed parallel to the shoreline.

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(g) The placement of sand, gravel, rubble, concrete, or other inert material, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. All material shall be non-toxic sand, gravel, concrete, rubble, or other inert material;

2. The placement of concrete or rubble shall be temporary in nature, and is not to be used as permanent protection, unless it is part of a DEP approved, engineered design for permanent shore protection;

3. All concrete and rubble placed on the beach shall be removed within 90 days, unless the placement is part of a Department approved, engineered design for permanent shore protection; and

4. The use of automobiles, tires, wood debris, asphalt, appliances or other solid waste is prohibited.

#### **7:7E-3A.4 Standards applicable to dune creation and maintenance**

(a) Dune creation and maintenance includes the placement and/or repair of sand fencing (including wooden support posts), the planting and fertilization of appropriate dune vegetation, the maintenance and clearing of beach access pathways less than eight feet in width, and the construction or repair of approved dune walkover structures. Bulldozing, excavation, grading, vegetation removal or clearing, and relocation of existing dunes are not authorized pursuant to this section.

(b) All dune creation and maintenance activities should be conducted in accordance with the specifications found in Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985), and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (Soil Conservation Service, 1992). The Department will provide site specific technical assistance for dune creation and maintenance projects, upon request.

(c) All proposed dune vegetation should be limited to the following coastal species: American Beachgrass (*Ammophila breviligulata*), Coastal Panicgrass (*Panicum amarulum*), Bayberry (*Myrica pennsylvanica*), Beach Plum (*Prunus maritima*), and Shore Juniper (*Juniperus conferta*). Although they may not be currently available from commercial nurseries at this time, the following plant species are also well suited to the dune environment: Seaside Goldenrod (*Solidago sempervirens*), Beach Pea (*Lathyrus japonicus*), Sea Oats (*Uniola paniculata*), Bitter Panicgrass (*Panicum amarum*), and even Saltmeadow Cordgrass (*Spartina patens*).

1. American beachgrass is the preferred species for the stabilization of newly established dunes, and for stabilization of the primary frontal dune. Woody plant species are suitable for back dune and secondary dune environments. Herbaceous plant species are preferred as supplemental plantings for all dune areas.

2. Dune vegetation should be diversified as much as possible, in an effort to provide continuous stabilization in the event that pathogens reduce or eliminate the effectiveness of one species. A complex of associated grasses, herbaceous species and woody species is preferred to the planting of one species.



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(d) The construction of elevated timber dune walkover structures shall be in accordance with the standards and specifications (or similar specifications) described in Beach Dune Walkover Structures (Florida Sea Grant, 1981). The construction of elevated dune walkover structures, particularly at municipal street-ends and other heavily used beach access points, is preferred to the construction of pathways or walkways through the dunes.

1. Copies of the DEP and Florida Sea Grant reports are available from the DEP, Land Use Regulation Program, PO Box 439, Trenton, NJ 08625-0439. Copies of the Soil Conservation Service report are available directly from the Soil Conservation Service, Plant Materials Center, 1536 Route 9 North, Cape May Court House, NJ 08210.

(e) The construction of at-grade dune walkovers is acceptable only at single family and duplex residential dwellings, subject to the following conditions:

1. Only one walkover per residential building is allowed;
2. The width of the walkover must not exceed four feet;
3. The walkover shall be fenced on both sides through the use of sand fencing;
4. The use of unrolled sand fencing as a base for the walkover is preferred to the use of planks and boards. Sand fence based walkovers allow for easier seasonal removal and placement, and allow for greater growth of beachgrass, while still providing an adequate base for pedestrian traffic; and
5. Solid boardwalk type walkovers shall be elevated at least one foot above the dune, to allow for movement of sand and vegetative growth under the boardwalk structure.

(f) The controlled use of discarded natural Christmas trees for the purpose of dune stabilization is generally discouraged, but may be acceptable, in accordance with the standards set forth below. Discarded Christmas trees serve the same function as sand fencing, by trapping wind blown sand and facilitating sand deposition and dune formation. However, uncontrolled or inappropriate placement of trees will hinder the development of dunes and may present a fire hazard.

1. Only natural, coniferous trees are suitable for use in dune stabilization. The use of tree limbs, clippings, artificial trees, and other dead vegetation is prohibited;
2. Trees should be placed at least 100 feet landward of the high water line, in areas which are generally not subject to spring tidal inundation and wave swash action;
3. The placement of trees should be oriented against the prevailing winds, in either a straight line or zig-zag formation;
4. The trees should be installed by overlapping the stump end of one tree with the pointed end of another, and then anchoring the connection point with a sufficient amount of sand to hold the trees in place;
5. Newly placed trees should be monitored to ensure that the trees remain anchored and do not become dislodged. Additional quantities of sand or wooden anchor stakes may be used to hold the trees in place until they become stabilized; and
6. All newly deposited sand should be stabilized through the planting of beachgrass, during the appropriate planting season.

#### **7:7E-3A.5 Standards applicable to the construction of boardwalks**

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(a) The construction of oceanfront or bayfront boardwalks should address a number of engineering concerns related to structural support, resistance to vertical and horizontal water and wind loads, and scouring. The construction of boardwalks along tidal shoreline is acceptable, in accordance with the following standards:

1. All timber support piles shall be a minimum of eight inches in diameter;
2. Support piles should be driven to a depth of at least -10 feet (mean sea level), for all V-zone locations. In A-zones, the depth of penetration should be at least -five feet (mean sea level);
3. The method for insertion of piles should be a pile driver or drop hammer;
4. All support joists and timber connections should be anchored through the use of hurricane clips or metal plates; and
5. All metal fasteners, including but not limited to bolts, screws, plates, clips, anchors and connectors, shall be hot dipped galvanized.

### **SUBCHAPTER 3B. INFORMATION REQUIRED IN WETLAND AND INTERTIDAL AND SUBTIDAL SHALLOWS MITIGATION PROPOSALS**

#### **7:7E-3B.1 Purpose and scope**

(a) This subchapter sets forth the standards for mitigation proposals pursuant to N.J.A.C. 7:7E-3.15 and 7:7E-3.27.

1. Mitigation for the loss of tidal wetlands and intertidal and subtidal shallows shall comply with the Coastal Permit Program rules, N.J.A.C. 7:7, and the Coastal Zone Management rules, N.J.A.C. 7:7E, and include an appropriate buffer area; and
2. Mitigation for the loss of freshwater wetlands shall comply with the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, Coastal Permit Program rules, N.J.A.C. 7:7, and the Coastal Zone Management rules, N.J.A.C. 7:7E.

#### **7:7E-3B.2 Tidal wetland and intertidal and subtidal shallows mitigation proposal requirements**

(a). All tidal wetland and intertidal and subtidal shallows mitigation proposals submitted to the Land Use Regulation Program shall include, but not be limited to:

1. An introduction describing the wetland or intertidal and subtidal shallows mitigation proposal. The introduction shall include the following:
  - i. The amount, in acres, of:
    - (1) Wetlands to be created, enhanced, or restored, in accordance with N.J.A.C. 7:7E-3.27 and the associated wetlands buffer area required by N.J.A.C. 7:7E-3.28; or
    - (2) The amount of intertidal and subtidal shallows to be created as required by N.J.A.C. 7:7E-3.15;
  - ii. The goals of the mitigation project in terms of either (a)1ii(1) or (2) below:
    - (1) For creation, restoration or enhancement of wetlands, the wetlands types, values, and functions, and a discussion of how the mitigation proposal will satisfy those goals. For example, the goal of the wetlands mitigation project is to establish a low marsh wetland complex dominated by *Spartina alterniflora* that is flowed twice daily by the tide; or
    - (2) For intertidal and subtidal shallows creation, the area, depth, and duration of tidal

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inundation;

iii. The reasons why the mitigation site is an appropriate site for meeting the goals in (a)1ii above, and the aspects of the site that will ensure the success of the mitigation project;

iv. A copy of the USGS quad map(s) showing the location of the permitted activity and showing the mitigation site with the state plane coordinates of the mitigation site. The accuracy of these coordinates shall be within 50 feet of the actual center point of the site. For linear mitigation projects 2,000 feet in length and longer, additional coordinates shall be provided at each 1,000 foot interval; and

v. The New Jersey Wetlands/Tidelands Map number(s) for the development and for the mitigation site, if the mitigation site is at a different location;

2. A description (such as size, type, vegetation, hydrology, and wildlife use) of the wetlands or intertidal and subtidal shallows that are being destroyed or disturbed by the permitted activity;

3. Photographs of the proposed mitigation site showing topography, vegetation, tidal streams and wetland features;

4. The names and addresses of all current and proposed owner(s) of the mitigation site;

5. The lot, block, municipality and county of the proposed mitigation site. This information shall also be visible on the front page of the proposal and on the site plan;

6. A discussion relative to the proposed hydrology of the mitigation site. The discussion should focus on the sources of water for the mitigation project, provide seasonal high water table information as well as the projected elevation of final grade of the mitigation project in relation to mean sea level (MSL), along with slope percent;

7. A projected water budget for the proposed mitigation site. The water budget should detail the sources of water for the mitigation project as well as the water losses. The projected water budget should document that an ample supply of water is available to create, enhance, or restore wetland conditions, as applicable. The water budget must contain sufficient data to show that the mitigation project will indefinitely in the future have sustained wetland hydrology, or for intertidal and subtidal shallows, that the mitigation project will have sustained tidal inundation. The water budget shall include the following regional information for the proposed and existing site conditions:

i. The seasonal high water table;

ii. The tidal range (low, high and spring high tide) over the course of a month;

iii. For wetland creation, restoration or enhancement, the elevation of the existing reference wetland system in the vicinity of the project site, if applicable; and

iv. For wetland creation, restoration or enhancement, the salinity range of adjacent waters;

8. For wetland creation, restoration and enhancement, a detailed discussion relating to the created substrate of the proposed mitigation site, including a description of how the substrate of the site will be prepared, as well as a demonstration that the soil texture and pH are appropriate for the proposed wetland community;

9. For wetland creation, restoration and enhancement, a landscape plan showing the proposed vegetative community on the proposed mitigation site, including the buffer area defined at N.J.A.C. 7:7E-3.28. The landscape plan shall include the following:

i. The species;

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- ii. The quantity and location of each species;
- iii. The stock type (for example, plugs, potted, seed);
- iv. The source of the plant material;
- v. The proper time to plant; and
- vi. Any appropriate substitutions as approved by the Department;

10. For wetland creation, restoration and enhancement, a preventative maintenance plan detailing how invasive or noxious vegetation will be controlled, and how predation of the mitigation plantings will be prevented. The plan shall describe the measures to be taken if a problem with invasive or noxious plants or predation occurs during the construction or monitoring period. The installation of goose fences to control problems resulting from the presence of geese in the State is encouraged;

11. A draft conservation restriction that meets the requirements of N.J.A.C. 7:7E-3.27(h)6. A model conservation restriction is available from the Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 777-0454;

12. A metes and bounds description of the proposed mitigation site. For wetland creation, restoration or enhancement, the metes and bounds description shall include the buffer area as defined at N.J.A.C. 7:7E-3.28;

13. An estimate of the actual cost of carrying out the construction of the mitigation project. The cost estimate shall include the value of the land, site preparation costs, engineering costs, plantings costs, environmental consultant fees, attorney fees, construction costs, supervising construction fees and monitoring costs. The cost estimate of the project will be used when determining the amount of the financial assurance required;

14. A site plan for the mitigation project which includes:

- i. The lot, block, municipality and county of the proposed mitigation site; and
- ii. Existing and proposed elevations and grades of the mitigation site, and off-site elevations and grades when the proposed elevations on the mitigation project site will create potentially unstable conditions on the adjoining parcel or create slopes greater than 15 percent. All existing and proposed elevations and grades must be shown in at least one foot intervals. For wetland creation, restoration or enhancement, only, the slope of the proposed mitigation site shall have a run to rise ratio no greater than 10 feet vertical to one foot horizontal (10:1) along a created buffer area as well as along any berms that are intended to function as water control structures or berms created along a stream;

iii. Pre- and post- construction plan views and cross sectional views of the mitigation site;

iv. For wetland creation, restoration or enhancement only, the buffer area required under N.J.A.C. 7:7E-3.28;

v. For wetland creation, restoration or enhancement only, a detail that shows, or a statement indicating the soil amendments and the seed stabilization mix, if any, to be used on the mitigation site;

15. A construction schedule including projected dates of excavation, planting, fertilizing, as appropriate;

16. Certification demonstrating that the proposed mitigation will not adversely affect districts, buildings, structures, or archaeological sites that are listed in, or eligible for listing in, the National Register of Historic Places. If during construction of the mitigation site the mitigator encounters National Register of Historic Places listed or

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eligible historic districts, buildings, structures, or archaeological sites, the mitigator shall notify the Department immediately and proceed as directed by the Department;

17. A financial assurance that meets the requirements at N.J.A.C. 7:7E-3B.3; and

18. Any additional information the Department determines necessary to review an individual mitigation project.

### **7:7E-3B.3 Financial assurance requirements**

(a) A letter of credit or other financial assurance is required prior to approval of the mitigation proposal by the Department, except if the mitigator is a government agency or an entity that is exempt from this requirement under Federal Law. The letter of credit or other financial assurance shall be obtained from a firm licensed to do business in New Jersey.

(b) The letter of credit or other financial assurance shall be in the amount sufficient for the Department to hire an independent contractor to complete and maintain the mitigation project should the mitigator default. The financial assurance shall be in the following amounts:

1. For wetland creation, restoration or enhancement, and for intertidal and subtidal shallows creation, a construction assurance, equal to 115 percent of the estimated cost of completing the mitigation; and

2. For wetland creation, restoration or enhancement, a maintenance assurance to ensure success of the mitigation through the completion of the monitoring period, equal to 115 percent of the estimated cost of maintaining and monitoring the mitigation project.

(c) The financial assurance will be reviewed annually by the Department and shall be adjusted to reflect current economic factors.

(d) The portion of the financial assurance required under (b)1 above, shall be released upon the Department's determination that the construction phase and planting phase, if any, of the mitigation project have been successfully completed in accordance with the mitigation proposal; and

(e) The portion of the financial assurance required under (b)2 above, shall be released upon the Department's finding that the mitigation project is successful in accordance with N.J.A.C. 7:7E-3B.5.

### **7:7E-3B.4 Department review of mitigation proposal**

(a) The Department shall, within 60 days after receiving a mitigation proposal, review the proposal for completeness and:

1. Request any addition information; or
2. Declare the mitigation proposal complete.

(b) The Department shall approve a mitigation proposal only if it meets all of the applicable requirements of this subchapter.

(c) Prior to the commencement of mitigation, the mitigator shall submit proof that the

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conservation restriction required at N.J.A.C. 7:7E-3B.2(a)11 was recorded with the County Clerk (or the Registrar of Deeds and Mortgages, if applicable).

#### **7:7E-3B.5 Post-construction monitoring of the mitigation site**

(a) All mitigation projects subject to this subchapter shall perform post-construction monitoring in accordance with (a)1 or 2 below.

1. All tidal wetland mitigation sites shall demonstrate compliance with each post-construction monitoring season specified in (b) 1, 2 and 3 below. Post-construction monitoring shall begin the first full growing season after the construction/planting of the mitigation project is completed. A full growing post-construction monitoring season, in general, is the period from the beginning of April through the beginning of October, depending upon the location of the site in the State.

2. All intertidal and subtidal shallows mitigation sites shall demonstrate compliance with the post-construction monitoring standards at (c)1 and 2 below for a lunar month after construction of the mitigation site is completed. A lunar month is the period between two successive full moons.

(b) For wetland mitigation projects, the post-construction monitoring required at (a)1 above shall meet the standards listed below for each full growing post-construction monitoring season. Failure to meet the standards for a given post-construction monitoring season described at (b)1, 2 or 3 below shall result in a remedial action by the mitigator. The Department, after consultation with the mitigator, shall determine the remedial actions necessary to correct the unsatisfactory condition. Remedial action may include, but not be limited to, regrading, replanting, or relocation of the mitigation site.

1. For the first post-construction monitoring season to be considered successful, the post-construction monitoring report described at (d) below shall provide documentation demonstrating that the standards listed at 1i through iv below are satisfied. If one or more of the standards listed below are not satisfied, then a remedial action as described in (b) above will be required, and this full growing post-construction monitoring season shall be repeated.

i. Documentation through soil borings, demonstrating that the appropriate soil was used on the site as indicated in the mitigation approval;

ii. As-built plans, demonstrating that the site was graded and planted in accordance with the approved mitigation plans;

iii. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating the mitigation site is a wetland;

iv. Documentation demonstrating that the percent coverage of the planted vegetation or targeted hydrophytes as detailed in the approved mitigation plan has been achieved.

2. For the second post-construction monitoring season to be considered successful, the post-construction monitoring report described at (d) below shall provide documentation demonstrating that the standards listed at (b)2i and ii below are satisfied. If the standards at (b)2i and ii listed below are not satisfied, then a remedial action as described at (b) above will be required, and this full growing post-construction monitoring season shall be repeated.

i. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating that the mitigation site continues to be a wetland;

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ii. Documentation demonstrating that the percent coverage of the planted vegetation or targeted hydrophytes as detailed in the approved mitigation plan has been achieved.

3. For the final post-construction monitoring season to be considered successful, the post-construction monitoring report described at (d) below shall provide documentation demonstrating that the standards listed at (b)3i through iv below are satisfied. If one or more of the standards listed below are not satisfied, then a remedial action as described at (b) above will be required, and this full growing post-construction monitoring season shall be repeated.

i. Documentation demonstrating that the approved goals of the wetland mitigation project (including the required buffer area) prepared pursuant to N.J.A.C. 7:7E-3B.2(a) and the permit are satisfied. This documentation shall include information concerning invasive/noxious plant species and the percent coverage of these species on the site;

ii. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating that the mitigation site is a wetland. The documentation shall include, when appropriate, monitoring well data, stream gauge data, photographs and field observation notes collected throughout the monitoring period;

iii. Documentation demonstrating that the percent coverage of the planted vegetation or targeted hydrophytes as detailed in the approved mitigation plan has been achieved;

iv. A field delineation of the wetlands at the wetland mitigation project site, based on techniques specified in the Federal Manual for Identifying and Delineation Jurisdictional Wetlands (1989) herein incorporated by reference. This manual is available from the Department's Office of Maps and Publications at (609) 777-1038 for a fee; and

v. A plan showing the flagged wetland delineation required at (b)3iv above. The wetland line shall include global positioning system data points.

(c) For intertidal and subtidal shallows mitigation projects, the post-construction monitoring required at (a)2 above shall comply with (c)1 and 2 below. If one or more of the standards listed below are not satisfied, then the post-construction monitoring shall be repeated the following lunar month(s) until all of the standards listed below are satisfied. Failure to meet the standards for a given post-construction monitoring season described at (c)1 or 2 below shall result in a remedial action. The Department, after consultation with the mitigator, shall determine the remedial actions necessary to correct the unsatisfactory condition. Remediation may include, but not be limited to, regrading of the mitigation site. The mitigator shall submit:

1. As-built plans with soundings demonstrating that the site was graded according to the approved mitigation plans; and

2. Documentation demonstrating that the mitigation site meets the definition of an intertidal subtidal shallow, that is it is permanently or twice daily submerged from the spring high tide to a depth of four feet below mean low water.

(d) The post-construction monitoring reports required at (b) and (c) above shall be submitted to the Department by November 15 of each year and shall include five copies of the following:

1. A USGS quad map showing the location of the mitigation site; a county road map showing the location (including the lot and block) of the mitigation site, of the mitigation

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site; and a copy of an aerial photograph of the mitigation site. The point(s) of access to the mitigation site must be clearly indicated on all maps;

2. A copy of the permit that required the mitigation;

3. A brief description of the mitigation project;

4. Photographs of the mitigation site with a location map indicating the location and direction of each photograph;

5. For mitigation projects requiring the establishment of a vegetative community, an assessment of the planted vegetation and the species that are naturally colonizing the site. This assessment shall include data sheets from the sampling points which describe the vegetation present, the percent coverage of the vegetation, the results of the analysis of the soil borings and the location of the water table;

6. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating that the mitigation site is a wetland or intertidal or subtidal shallows. The documentation shall include, as appropriate, monitoring well data, stream gauge data, photographs and/or field observation notes collected throughout the post-construction monitoring period;

7. Documentation, based on field data, that the approved goals of the mitigation project (including the buffer area, for wetland creation, restoration or enhancement only) prepared pursuant to N.J.A.C. 7:7E-3B.2(a), are satisfied;

8. A narrative evaluating the success/failure of the project in accordance with (b) and/or (c) above; and

9. In the event the mitigation monitoring period is a failure in accordance with (b) and/or (c) above, a narrative description of proposed actions that will permanently rectify the problems.

### **SUBCHAPTER 3C. STANDARDS FOR CONDUCTING AND REPORTING THE RESULTS OF AN ENDANGERED OR THREATENED WILDLIFE OR PLANT SPECIES HABITAT IMPACT ASSESSMENT AND/OR ENDANGERED OR THREATENED WILDLIFE SPECIES HABITAT EVALUATION**

#### **7:7E-3C.1 Purpose and Scope**

(a) This subchapter sets forth the standards for conducting an Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment and for conducting an Endangered or Threatened Wildlife Species Habitat Evaluation. One or both must be employed by an applicant seeking to demonstrate compliance with or inapplicability of N.J.A.C. 7:7E-3.38 when the site contains or abuts areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps. This subchapter also sets forth the standards for reporting the results of an Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment and an Endangered or Threatened Wildlife Species Habitat Evaluation.

(b) An Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment is required to demonstrate that endangered or threatened wildlife or plant species habitat as defined at N.J.A.C. 7:7E-3.38(a) would not, directly or through secondary impacts on the relevant site or in the surrounding area, be adversely affected



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by the proposed development. The standards for conducting an impact assessment pursuant to N.J.A.C. 7:7E-3.38(b), (d) and (e) are found at N.J.A.C. 7:7E-3C.2.

(c) An Endangered or Threatened Wildlife Species Habitat Evaluation is required to demonstrate that a site does not contain suitable habitat, as defined at N.J.A.C. 7:7E-3.38(a), including sufficient buffer to ensure continued survival of the population of the species, pursuant to N.J.A.C. 7:7E-3.38(c). The standards for conducting an evaluation are found at N.J.A.C. 7:7E-3C.3.

(d) The reporting requirements for habitat evaluations and impact assessments are found at N.J.A.C. 7:7E-3C.4.

### **7:7E-3C.2 Standards for conducting Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessments**

(a) These standards shall be used by applicants who choose not to dispute the Department designation of the site as endangered or threatened wildlife species habitat. Applicants shall demonstrate compliance with N.J.A.C. 7:7E-3.38(b) by providing information required at this section and N.J.A.C. 7:7E-3C.4. The required information shall demonstrate that the proposed development will not negatively affect the population(s) or habitat of endangered or threatened wildlife species that resulted in identification of the site, or an area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. 7:7E-3.38(a) and/or (d).

(b) These standards shall be used by applicants if an endangered or threatened plant species has been documented to be on the site or a portion of the site or an area abutting the site. Applicants shall demonstrate compliance with N.J.A.C. 7:7E-3.38(b) by providing information required at this section and N.J.A.C. 7:7E-3C.4. The required information shall demonstrate that the proposed development will not negatively affect the population(s) or habitat of endangered or threatened plant species documented to be on the site or a portion of the site or on an area abutting the site.

(c) Impact assessments shall be conducted for each endangered or threatened wildlife or plant species described in (a) and/or (b) above. The impact assessment shall consider the likely affects of the proposed development on the local populations of the particular species on or abutting the site. The impacts shall be assessed using accepted ecological principles and scientific literature on each species and both direct and indirect impacts of the proposed development shall be considered. This assessment shall be based on habitat requirements and life history of each species, and the manner in which the proposed development may alter habitat, including, but not limited to, vegetation, soils, hydrology, human disturbance, and effects on competitor, parasite, or predator species.

### **7:7E-3C.3 Standards for conducting Endangered or Threatened Wildlife Species Habitat Evaluations**

(a) These standards shall be used by applicants who dispute the Department designation of the site as endangered or threatened wildlife species habitat, or dispute the boundary of that habitat. Applicants who dispute the Department's determination shall

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provide information that demonstrates that the habitat is not suitable for each of the endangered or threatened wildlife species that resulted in that identification of the site, a portion of the site, or an area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. 7:7E-3.38(a) and/or (d).

(b) Habitat evaluations for endangered or threatened wildlife species pursuant to N.J.A.C. 7:7E-3.38(c) shall be conducted for each wildlife species described in (a) above. This habitat evaluation shall:

1. Use scientific methodology appropriate for each species or species group;
2. Examine specific attributes and characteristics of the site that limit or eliminate its suitability as habitat, including, but not limited to, an examination of vegetative cover, soils, hydrology, existing land use and any other factors that are used to determine suitability of a site for the species. The site's vegetative analysis shall include an on-site investigation and evaluation; and
3. Include an examination of the area surrounding the site using aerial photographs and/or appropriate cover maps.

(c) A survey for the endangered or threatened wildlife species that resulted in identification of the site, a portion of the site, or an area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. 7:7E-3.38(a) and/or (d), will only be considered in the context of supplementing information on habitat suitability. If such a survey is conducted, it shall be conducted consistent with techniques established in the scientific literature.

#### **7:7E-3C.4 Standards for reporting the results of impact assessments and habitat evaluations**

(a) All habitat evaluations and impact assessments submitted to the Department shall include:

1. An introduction describing the goals of the habitat evaluation and/or impact assessment;
2. A copy of the USGS quad map(s) showing the location of the site, with the State plane coordinates of the site. The accuracy of these coordinates shall be within 50 feet of the actual center point of the site. For linear sites, 2,000 feet in length and longer, additional coordinates shall be provided at each 1,000 foot interval;
3. The lot, block, municipality and county in which the site is located;
4. For wildlife habitat evaluations and impacts assessments only, a map identifying the site, and the areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps onsite and abutting the site, along with a list of the endangered or threatened species that resulted in the mapping of endangered or threatened species habitat;
5. For impact assessments for plant species only, a map identifying the location of the species habitat on the site or abutting the site along with a list of the potential plant species from the Department's Natural Heritage Database;
6. A description of the habitat requirements for each of these species identified at (a)4 and/or 5 above, including appropriate literature citations; and

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7. The names and qualifications of all investigators who performed habitat evaluations, species surveys, and/or impact assessments.

(b) For wildlife habitat evaluations only, a narrative, including supporting documentation, including maps, photographs and field logs, which contains the following:

1. A description, for each species, of the findings of the habitat evaluation performed in accordance with N.J.A.C. 7:7E-3C.3;

2. If a survey was conducted in accordance with N.J.A.C. 7:7E-3C. 3(b), literature citations for the methodology used and a description of how the methodology was applied to the survey, giving the following information: surveyor's name(s), dates and times surveys were performed, number of samples, and number of replications. This information shall be provided for each species surveyed.

3. A comparison of the findings of the habitat evaluation with the known habitat requirements for each species, as provided at (a)6 above, and a description of the specific attributes and characteristics of the site that limit or eliminate the site's suitability as habitat;

(c) For impact assessments only, a narrative, including supporting documentation, such as maps and photographs, which contains the following:

1. A description for each species, of how the proposed development will alter habitat, including vegetation, soils, hydrology, human disturbance, and effects on competitor, parasite, or predator species. The impact assessment shall describe the likely affects of the proposed development on the local populations of the particular species on or abutting the site and why the development would not directly or through secondary impacts adversely affect each endangered or threatened species habitat; and

2. Literature citations used to reach the conclusions in (c)1 above.

## **SUBCHAPTER 4. GENERAL WATER AREAS**

### **7:7E-4.1 Purpose and Scope**

(a) General Water Areas are all water areas which are located below either the spring high water line or the normal water level of non-tidal water that are subject to this subchapter and to Special Area rules.

(b) General Water Areas are divided by volume and flushing rate into eight categories as described below:

1. "Atlantic Ocean" includes the area of the Atlantic Ocean that extends out to the three geographical mile limit of the New Jersey territorial sea and is bounded by the boundaries of New York and Delaware (see Appendix, Figure 13c).

2. "Lakes, ponds and reservoirs" are relatively small water bodies with no tidal influence or salinity. Many are groundwater fed, while others serve as surface aquifer recharge areas. Lakes that are the result of former mining operations are not included in this definition, but are defined at N.J.A.C. 7:7E-3.14, Wet Borrow Pits.

3. "Large rivers" are waterways with watersheds greater than 1,000 square miles. Large Rivers are limited to the Delaware, Hudson and Raritan Rivers.

i. The Delaware River is a tidal river from the Bridge Street Bridge in Trenton to its

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mouth at Delaware Bay, defined as a line between Alder Cover, Lower Alloways Creek Township and the Delaware River Basin Commission-River and Bay Memorial at Liston Point, Delaware.

ii. The Hudson River is a tidal river from the New York State Line to its mouth at Upper New York Bay at the Morris Canal, Jersey City.

iii. The Raritan River is a tidal river from a point approximately 1.1 miles upstream from the Landing Lane Bridge between Piscataway and Franklin Townships to its mouth at Raritan Bay and the Arthur Kill.

4. "Man-made harbors" are semi-enclosed or protected water areas which have been developed for boat mooring or docking.

5. "Medium rivers, creeks and streams" are rivers, streams and creeks with a watershed of less than 1,000 square miles. This definition includes waterways such as the Hackensack, Passaic, Oldmans, Big Timber, Pennsauken, Navesink, Manasquan, Toms, Wading, Mullica, Great Egg, Maurice, Cohansey, Salem, and Rancocas (see Appendix, Figures 13c-e, incorporated herein by reference).

6. "Open bays" are a large, semi-confined estuaries with a wide unrestricted inlet to the ocean and with a major river mouth discharging directly into the upper portion. Open bays are limited to the Delaware Bay, Raritan Bay, Sandy Hook Bay and Upper New York Bay (see Appendix, Figure 13b, incorporated herein by reference).

7. "Semi-enclosed and back bays" are a partially confined estuary with direct inlet connection and some inflow of freshwater. Semi-enclosed bays differ from back bays in depth, degree of restriction of inlet and level of freshwater flow.

8. "Tidal guts" are the waterway connections between two estuarine bodies of water. Also known as thorofares or canals, tidal guts control the mix of salt and freshwater. Examples include the Arthur Kill and Kill Van Kull (see Appendix, Figures 13a-e, incorporated herein by reference).

(c) N.J.A.C. 7:7E-4.2 through 4.20 set forth the requirements for specific types of development within General Water Areas as defined at (a) above. In many cases an area already identified as a Special Area will also fall within the definition of a General Area. In these cases, both General and Special Area rules apply. In case of conflict between General and Special Area rules, the more specific Special Area rules shall apply.

#### **7:7E-4.2 Aquaculture**

(a) Aquaculture is the use of permanently inundated water areas, whether saline or fresh, for the purposes of growing and harvesting plants or animals in a way to promote more rapid growth, reduce predation, and increase harvest rate. Oyster farming in Delaware Bay is a form of aquaculture.

(b) Aquaculture is encouraged in all General Water Areas as defined at N.J.A.C. 7:7E-4.1, provided:

1. It does not unreasonably conflict with resort or recreation uses;
2. It does not cause significant adverse off-site environmental impacts; and
3. It does not present a hazard to navigation. A hazard to navigation includes all potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers.

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(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.3 Boat ramps**

(a) Boat ramps are inclined planes, extending from the land into a water body for the purpose of launching a boat into the water until the water depth is sufficient to allow the boat to float. Boat ramps are most frequently constructed of asphalt, concrete or crushed shell.

(b) Boat ramps are conditionally acceptable provided:

1. There is a demonstrated need that cannot be met by existing facilities;
2. They cause minimal practicable disturbance to intertidal flats or subaqueous vegetation;
3. Boat ramps shall be constructed of environmentally acceptable material, such as concrete or oyster shells; and
4. Garbage cans are provided near the boat ramp.

(c) Public use ramps shall have priority over restricted use and private ramps.

(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.4 Docks and piers for cargo and commercial fisheries**

(a) Docks and piers for cargo and passenger movement and commercial fisheries are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading passengers or cargo, including fluids, connected to or associated with, a single industrial or manufacturing facility or to commercial fishing facilities.

(b) Docks and piers for cargo and passenger movement and commercial fisheries are conditionally acceptable provided:

1. The width and length of the dock or pier is limited to only what is necessary for the proposed use;
2. The dock or pier will not pose a hazard to navigation. A hazard to navigation includes all potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers; and
3. The associated use of the adjacent land meets all applicable Coastal Zone Management rules.

(c) The standards for port uses are found at N.J.A.C. 7:7E-7.9. The standards for the construction of a dock or pier composed of fill and retaining structures are found at N.J.A.C. 7:7E-4.10.

(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.5 Recreational docks and piers**

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(a) Recreational and fishing docks and piers are structures supported on pilings driven into the bottom substrate, or floating on the water surface or cantilevered over the water, which are used for recreational fishing or for the mooring of boats or jet skis used for recreation or fishing, except for commercial fishing, and house boats.

(b) Recreational docks and piers, including jet ski ramps, mooring piles, are conditionally acceptable provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;
2. The construction minimizes adverse environmental impact to the maximum extent feasible;
3. The docks and piers and their associated mooring piles are located so as to not conflict with overhead transmission lines;
4. There is minimum feasible interruption of natural water flow patterns;
5. Space between horizontal planking is maximized and width of horizontal planking is minimized to the maximum extent practicable. Under normal circumstances, a minimum of 3/8 inch, 1/2 inch, 3/4 inch, or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks, respectively.
6. The width of the structure shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high tide (measured from the bottom of the stringers), except for floating docks whose width shall not exceed eight feet. Under typical circumstances the maximum width of the structure shall be eight feet over water and six feet over wetlands and intertidal flats, except as noted at (b)6iii below. For the purposes of this section, an intertidal flat is a low lying strip of land along a shoreline located between spring high and spring low tides. The height of the structure over wetlands shall be a minimum of four feet regardless of width;
  - i. A minimum of eight feet of open water shall be provided between any docks if the combined width of the docks over the water exceeds eight feet;
  - ii. Construction and placement of the dock shall be a minimum of four feet from all property lines, for docks which are perpendicular to the adjacent bulkhead or shoreline; and
  - iii. In man-made lagoons only, the maximum width of the structure shall be eight feet over water and six feet over wetlands; The height of the structure over wetlands shall be a minimum of four feet;
7. In man-made lagoons only, the structure extends no more than 20 percent of the width of the lagoon from bank to bank; and
8. The proposed structure and associated mooring piles do not hinder navigation or access to adjacent water areas. A hazard to navigation will apply to all potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers.

(c) The construction of recreational docks and piers within areas designated by the Department as shellfish habitat must comply with the standards specified under the shellfish habitat rule, N.J.A.C. 7:7E-3.2.

(d) The construction of recreational docks and piers within submerged vegetation areas must comply the standards specified under the Submerged Vegetation rule,

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N.J.A.C. 7:7E-3.6.

(e) For sites which have existing dock or pier structures exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to increase the coverage over the water area or wetland by relocating or increasing the number or size of docks or piers, the existing oversized structures must be reduced to a maximum of eight feet in width over water areas and six feet in width over wetlands and intertidal flats. All structures proposed as part of an expansion must comply with all of the applicable Coastal Zone Management rules.

(f) The construction of covered or enclosed structures such as gazebos or sheds located on or above the decking of recreational docks and piers is prohibited except on public piers owned and controlled by a public agency.

(g) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.6 Maintenance dredging**

(a) Maintenance dredging is the removal of accumulated sediment from previously authorized and legally dredged navigation and access channels, marinas, lagoons, canals or boat moorings for the purpose of maintaining a previously authorized water depth and width for safe navigation.

1. To be considered maintenance dredging:

i. The proposed dredge area must be limited to the same depth, length and width as the previous dredging operation; and

ii. For natural water areas, the area must have been either:

(1) Currently used for navigation or mooring of vessels requiring the proposed water depth; or

(2) Dredged within the last 10 years.

(b) Maintenance dredging is conditionally acceptable to the authorized depth, length and width within all General Water Areas to ensure that adequate water depth is available for safe navigation, provided:

1. An acceptable dredged material placement site, with sufficient capacity will be used. (see N.J.A.C. 7:7E-4.8 Dredged material disposal in water areas and N.J.A.C. 7:7E-7.12 Dredged material placement on land);

2. Pre-dredging chemical and physical analysis of the dredged material and/or its elutriate may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation and bioassay testing of sediments, may also be required as needed to determine the acceptability of the proposed placement site for the dredged material. The results of these tests will be used to determine if contaminants may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of the proposed dredged material placement method and site;

3. Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and slurry or decant water overflows shall meet applicable State Surface Water Quality Standards at N.J.A.C. 7:9B.

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The Department may require the permittee to conduct biological, physical and chemical water quality monitoring before, during, and after dredging and disposal operations to ensure that water quality standards are not exceeded;

4. If predicted water quality parameters are likely to exceed State Surface Water Quality Standards, or if pre-dredging chemical analysis of dredged material or elutriate reveals significant contamination, the Department will work cooperatively with the applicant to fashion acceptable control measures and will impose seasonal restrictions under specific circumstances identified at (b)7 below;

5. For mechanical dredges such as clamshell bucket, dragline, grab, or ladders, deploying silt curtains at the dredging site may be required, if feasible based on site conditions. Where the use of silt curtains is infeasible, dredging using closed watertight buckets or lateral digging buckets may be required. The Department may decide not to allow mechanical dredging of highly contaminated sites even if turbidity control measures were planned;

6. For hydraulic dredges specific operational procedures designed to minimize water quality impacts, such as removal of cutter head, flushing of pipeline sections prior to disconnection, or limitations on depth of successive cuts may be required;

7. The Department may authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

i. Known spawning, wintering or nursery areas of shortnose sturgeon, winter flounder Atlantic sturgeon, alewife, blueback herring, striped bass, white perch or blue crab;

ii. Water bodies downstream of known anadromous fish spawning sites under N.J.A.C. 7:7E-3.5 Finfish migratory pathways, where the predicted turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

iii. Areas of contaminated sediments with high levels of fecal coliform and/or streptococcus bacteria, and/or hazardous substances adjacent to (upstream or downstream) State approved shellfishing waters and public or private bathing beaches; or

iv. Areas within 1,000 meters or less of oyster beds as defined in N.J.A.C. 7:7E-3.2; and

8. Maintenance dredging side slopes shall not be steeper than 3:1 adjacent to wetlands to prevent undermining and/or sloughing of the wetlands.

(c) Reprofiling, which is the movement of material from one area of a berth or channel to an adjacent, deeper location, is discouraged in all water areas except the New York-New Jersey Harbor Area as provided at (c)1 below.

1. Reprofiling is conditionally acceptable in the New York-New Jersey Harbor Area north of Sandy Hook, excluding the Raritan Bay and its tributaries east of the Cheesequake Creek provided:

i. The applicant has demonstrated that there is no other available dredged material management alternative;

ii. The project involves the movement of less than 5,000 cubic yards of material;

iii. The depth of the material to be removed is limited to three feet;

iv. There exists a suitable adjacent deep water area with sufficient capacity to accommodate the relocated material within which the material will be stable and located



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so as not to interfere with adjacent navigation channels or berths; and

v. The reprofiling is performed by dragging a steel beam or pipe across the berth and/or channel bottom, thereby leveling accumulated sediment to a uniform, specified depth. Alternative procedures will be considered only under special instances where the use of a drag bar is impractical due to limited space in the project area.

(d) Propwash dredging, which is the movement of sediment by resuspending accumulated material by scouring the bottom with boat propellers or specially designed equipment with propellers, is prohibited.

(e) The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.

(f) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.7 New dredging**

(a) New dredging is the removal of sediment that does not meet the definition of maintenance dredging at N.J.A.C. 7:7E-4.6.

(b) New dredging is conditionally acceptable in all General Water Areas for boat moorings, navigation channels or anchorages provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;
2. The facilities served by the new dredging satisfy the location requirements for Special Water's Edge Areas;
3. The adjacent water areas are currently used for recreational boating, commercial fishing or marine commerce;
4. The dredge area causes no significant disturbance to Special Water or Water's Edge Areas;
5. The adverse environmental impacts are minimized to the maximum extent feasible;
6. The dredge area is reduced to the minimum practical;
7. The maximum depth of the newly dredged area shall not exceed that of the connecting access or navigation channel necessary for vessel passage to the bay or ocean;
8. Dredging will have no adverse impacts on groundwater resources;
9. No dredging shall occur within 10 feet of any wetlands. The proposed slope from this 10 foot buffer to the nearest edge of the dredged area shall not exceed three vertical to one horizontal; and
10. Dredging shall be accomplished consistent with all of the following conditions, as appropriate to the dredging method:
  - i. An acceptable dredged material placement site with sufficient capacity will be used. (See N.J.A.C. 7:7E-4.8 Dredged material disposal in water areas, and N.J.A.C. 7:7E-7.12 Dredged material placement on land);

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ii. Pre-dredging chemical and physical analysis of the dredged material and/or its elutriate may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation and bioassay testing of sediments, may also be required as needed to determine the acceptability of the proposed placement site for the dredged material. The results of these tests will be used to determine if contaminants may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of the proposed dredged material placement method and site;

iii. Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and slurry water overflows shall meet applicable State Surface Water Quality Standards at N.J.A.C. 7:9B. The Department may require the permittee to conduct biological, physical and chemical water quality monitoring before, during, and after dredging and disposal operations to ensure that water quality standards are not exceeded;

iv. If predicted water quality parameters are likely to exceed State Surface Water Quality Standards, or if pre-dredging chemical analysis of dredged material or elutriate reveals significant contamination, then the Department will work cooperatively with the applicant to fashion acceptable control measures and will impose seasonal restrictions under the specific circumstances identified at (b)11vii below;

v. For new dredging using mechanical dredges such as clamshell bucket, dragline, grab, or ladders, deploying silt curtains at the dredging site may be required, if feasible based on site conditions. Where the use of silt curtains is infeasible, dredging using closed watertight buckets or lateral digging buckets may be required. The Department may decide not to allow mechanical dredging of highly contaminated sites even if turbidity control measures were planned;

vi. For hydraulic dredges, specific operational procedures designed to minimize water quality impacts, such as removal of cutter head, flushing of pipeline sections prior to disconnection, or limitations on depth of successive cuts, may be required;

vii. The Department may authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

(1) Known spawning, wintering or nursery areas of shortnose sturgeon, winter flounder, Atlantic sturgeon, alewife, blueback herring, striped bass or blue crab;

(2) Water bodies downstream of known anadromous fish spawning sites under N.J.A.C. 7:7E-3.5 Finfish migratory pathways, where the predicted turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

(3) Areas of contaminated sediments with high levels of fecal coliform and/or streptococcus bacteria, and/or hazardous substances adjacent to (upstream or downstream) State approved shellfishing waters and public or private bathing beaches; or

(4) Areas within 1,000 meters or less of oyster beds as defined in N.J.A.C. 7:7E-3.2; and

viii. Side slopes shall not be steeper than 3:1 adjacent to wetlands to prevent undermining and/or sloughing of the wetlands.

(c) Propwash dredging, which is the movement of sediment by resuspending accumulated material by scouring the bottom with boat propellers or specially designed

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equipment with propellers is prohibited.

(d) New dredging or excavation to create new lagoons for residential development is prohibited in wetlands, N.J.A.C. 7:7E-3.27, wetlands buffer, N.J.A.C. 7:7E-3.28, endangered or threatened wildlife or vegetation species habitats, N.J.A.C. 7:7E-3.38, and discouraged elsewhere.

(e) New dredging is conditionally acceptable to control siltation in lakes, ponds and reservoirs, provided that an acceptable sedimentation control plan is developed to address re-sedimentation of these water bodies.

(f) The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.

(g) With the exception of N.J.A.C. 7:7E-4.7(b), (c), (d) and (e) above, new dredging is discouraged.

(h) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.8 Dredged material disposal**

(a) Dredged material disposal is the discharge of sediments removed during dredging operations.

(b) The standards relevant to dredged material disposal in water areas are as follows:

1. Dredged material disposal is prohibited in tidal guts, man-made harbors, medium rivers, creeks and streams, and lakes, ponds and reservoirs. Dredged material disposal is discouraged in open bays, semi-enclosed and backbays where the water depth is less than six feet;

2. Disposal of dredged materials in the ocean and bays deeper than six feet is conditionally acceptable provided that there is no feasible beneficial use or upland placement site available and it is in conformance with the USEPA and US Army Corps of Engineers Guidelines (40 C.F.R. parts 220-228 and 230-232 and 33 CFR, parts 320-330 and 335-338) established under Section 404(b) of the Clean Water Act and the Evaluation of Dredged Material Proposed for Ocean Disposal Testing Manual, EPA-503/8-91/001, February 1991, and Evaluation of Dredged Material Proposed for Discharge in Inland and Near Coastal Waters Testing Manual, EPA-000/0-93/000, May 1993, as appropriate to the proposed disposal site;

3. Dredged material disposal in water areas shall conform with applicable State Surface Water Quality Standards at N.J.A.C. 7:9B;

4. Overboard disposal (also known as aquatic, open water, side casting, subaqueous, or wet) of uncontaminated sediments into unconfined disposal sites in existing anoxic dredge holes, shall comply with the following:

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- i. Data on water quality, benthic productivity and seasonal finfish use demonstrate that the unconfined disposal site has limited biological value;
  - ii. All subaqueous dredged material disposal shall utilize best management techniques such as submerged elbows or underwater diffusers and may be limited to a particular tidal cycle to further minimize impacts; and
  - iii. The hole shall not be filled higher than the depth of the surrounding waters.
5. Overboard disposal of sediments consisting of less than 90 percent sand shall be conditionally acceptable in unconfined disposal sites when shallow waters preclude removal to an upland or confined site. Such disposal shall comply with the following:
- i. Shellfish habitats (as defined in N.J.A.C. 7:7E-3.2) are not within 1,000 meters;
  - ii. Disposal will not smother or cause condemnation or contamination of harvestable shellfish resources (as in N.J.A.C. 7:7E-3.2);
  - iii. Sediment characteristics of the dredged material and disposal site are similar; and
6. Uncontaminated dredged sediments with 75 percent sand or greater are generally encouraged for beach nourishment.

(c) The standards for dredged material placement on land are found at N.J.A.C. 7:7E-7.12.

(d) The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.

(e) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.9 Solid waste or sludge dumping**

(a) The dumping of solid waste or sludge is the discharge of solid or semi-solid waste material from industrial or domestic sources or sewage treatment operations into a water area.

(b) The dumping of solid or semi-solid waste of any type in any General Water Area is prohibited.

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.10 Filling**

(a) Filling is the deposition of material including, but not limited to, sand, soil, earth, and dredged material, into water areas for the purpose of raising water bottom elevations to create land areas.

(b) Filling is prohibited in lakes, ponds, reservoirs and open bay areas at greater than 18 feet as defined at N.J.A.C. 7:7E-4.1, unless the filling is consistent with the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and Freshwater Wetlands

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Protection Act rules, N.J.A.C. 7:7A.

(c) Filling in a man-made lagoon as defined at N.J.A.C. 7:7E-1.8, is discouraged unless:

1. The filling complies with (d) below; or
2. In those areas where two existing lawful bulkheads are not more than 75 feet apart and no limit of fill line has been promulgated by the Department, the connecting bulkhead may not extend seaward of a straight line connecting the ends of the existing bulkheads. Compliance with the mitigation rule at N.J.A.C. 7:7E-1.6 shall not be required in such cases.

(d) Except as provided in (b) and (c) above, filling is discouraged in all other water areas. In cases where there is no alternative to filling, filling is conditionally acceptable provided:

1. The use that requires the fill is water dependent;
2. There is a demonstrated need that cannot be satisfied by existing facilities;
3. There is no feasible or practical alternative site on an existing Water's Edge;
4. The minimum practicable area is filled;
5. The adverse environmental impacts are minimized, for example, by compensating for the loss of aquatic habitat by creation of an area of equivalent or greater environmental value elsewhere in the same estuary;
6. Minimal feasible interference is caused to Special Areas; and
7. Pilings and columnar support or floating structures are unsuitable for engineering or environmental reasons.

(e) Mitigation shall be required for the filling of tidal water areas at a ratio of one acre created to one acre lost in the same estuary. The mitigation standards for the filling of intertidal and subtidal shallows are found at N.J.A.C. 7:7E-3.15(g) and (h). Mitigation shall not be required for the following:

1. Filling in accordance with N.J.A.C. 7:7E-4.10(c);
2. Beach nourishment in accordance with N.J.A.C. 7:7E-7.11(d); and
3. Construction of a replacement bulkhead in accordance with N.J.A.C. 7:7E-7.11(e)2i or ii.

(f) Filling of wetlands must comply with the Wetlands rule, N.J.A.C. 7:7E-3.27.

(g) Filling using clean sediment of suitable particle size and composition is acceptable for beach nourishment projects provided it meets the standards of the Coastal Engineering rule, N.J.A.C. 7:7E-7.11(d)

(h) Standards for the removal of unauthorized fill are as follows:

1. For filling which took place prior to September 26, 1980 (the effective date of the Coastal Zone Management rules Statewide, or prior to September 28, 1978 for areas within the coastal area as defined by CAFRA (N.J.S.A. 13:19-4), removal shall be required only if the fill has resulted in ongoing significant adverse environmental impacts, such as the blocking of an otherwise viable tidal wetland or water body, and its

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removal will alleviate the adverse impacts.

2. For filling which took place subsequent to September 26, 1980 (or subsequent to September 28, 1978 for areas within the coastal area defined as defined by CAFRA (N.J.S.A. 13:19-4)) removal shall be required if the fill does not comply with the standards of (b), (c) or (d) above.

(i) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.11 Mooring**

(a) A boat mooring is a temporary or permanently fixed or floating anchored facility in a water body for the purpose of attaching a boat.

(b) Temporary or permanent boat mooring areas are conditionally acceptable provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;
2. Adverse environmental impacts are minimized to the maximum extent practicable;
3. The mooring area is adequately marked and is located so as not to hinder navigation. A hazard to navigation will apply to all potential impediments to navigation, including access to adjacent moorings, water areas, docks and piers.

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.12 Sand and gravel mining**

(a) Sand and gravel mining is the removal of sand or gravel from the water bottom substrate, usually by suction dredge, for the purpose of using the sand or gravel at another location.

(b) Sand and gravel mining is discouraged in all water body types except as provided at (b)1 below.

1. Sand and gravel mining is prohibited in lakes, ponds and reservoirs, man-made harbors and tidal guts as defined at N.J.A.C. 7:7E-4.1, unless the water body was created by the mining process, in which case the use is conditionally acceptable provided:

- i. Direct and indirect impacts to Special areas are minimized;
- ii. Turbidity and resuspension of toxic materials is controlled throughout the mining operation consistent with the State's Surface Water Quality Standards (N.J.A.C. 7:9B-4);
- iii. There is an acceptable disposal site for the waste from washing operations;
- iv. In rivers, creeks, and streams, the depth of water at the mining site is at least six feet below mean low water;
- v. The mining will not increase shoreline erosion; and
- vi. The mining will not create anoxic water conditions.

(c) Sand and gravel mining for the purposes of beach nourishment is conditionally acceptable provided:

1. Direct and indirect impacts to special areas and marine fish and fisheries are minimized;
2. In rivers, creeks, and streams, the depth of water at the mining site is at least six

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feet below mean low water;

3. The mining will not increase shoreline erosion;

4. The mining will not create anoxic water conditions; and

5. The beach nourishment project complies with the coastal engineering rule, N.J.A.C. 7:7E-7.11(d).

(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.13 Bridges**

(a) A bridge is any continuous structure spanning a water body, except for an overhead transmission line.

(b) Bridges are conditionally acceptable provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;

2. Pedestrian and bicycle use is provided for unless it is demonstrated to be inappropriate; and

3. Fishing catwalks and platforms are provided to the maximum extent practicable.

This shall be taken into consideration during the design phase of all proposed bridge projects.

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.14 Submerged pipelines**

(a) Submerged pipelines (pipelines) are underwater pipelines which transmit liquids or gas, including crude oil, natural gas, water petroleum products or sewerage.

(b) Submerged pipelines are conditionally acceptable provided:

1. The pipelines are not sited within Special Areas, unless no prudent and feasible alternate route exists;

2. Directional drilling is used unless it is demonstrated that the use of directional drilling is not feasible;

3. The pipeline is buried to a sufficient depth to avoid exposure or hazard;

4. All trenches are backfilled to preconstruction depth with naturally occurring sediment; and

5. The proposed development has been designed to minimize impacts to the water area.

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.15 Overhead transmission lines**

(a) Overhead transmission lines are wires hung between supporting pylons for transmission from the site of origin to the site of consumption. Overhead transmission lines include electrical, telecommunication and cable television lines.

(b) Overhead transmission lines are prohibited over open bays, semi-enclosed and back bays, lakes, ponds and reservoirs as defined at N.J.A.C. 7:7E-4.1. Overhead

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transmission lines are discouraged over large rivers as defined at N.J.A.C. 7:7E-4.1.

(c) Overhead transmission lines are conditionally acceptable over rivers, streams, creeks, and tidal guts as defined at N.J.A.C. 7:7E-4.1, provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;
2. There is no feasible alternative route that avoids crossing water bodies;
3. The transmission line provides adequate vertical clearance for masts; and
4. Visual impacts are minimized to the maximum extent practicable.

(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.16 Dams and impoundments**

(a) Dams and impoundments are structures that obstruct natural water flow patterns for the purpose of forming a contained volume of water. Impoundments include dikes with sluice gates and other structures to control the flow of water.

(b) Except for medium rivers, creeks and stream as defined at N.J.A.C. 7:7E-4.1, the construction of dams and impoundments is prohibited. The construction of these structures is conditionally acceptable in medium rivers, creeks and streams as defined at N.J.A.C. 7:7E-4.1, provided:

1. The structures are essential for water supply purposes or for the creation of special wildlife habitats;
2. Adverse impacts are minimized; and
3. The structures will not adversely affect navigation routes.

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.17 Outfalls and intakes**

(a) Outfalls and intakes are pipe openings that are located in water areas for the purpose of intake of water or discharge of effluent including sewage, stormwater and industrial effluents.

(b) Outfalls and intakes are conditionally acceptable provided that the use associated with the intake or outfall meets applicable Coastal Zone Management rules.

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.18 Realignment of water areas**

(a) Realignment of water areas means the physical alteration or relocation of the surface configuration of any water area. This does not include the rebulkheading of a previously bulkheaded water area or the bulkheading at or above the spring high water line.

(b) Realignment of naturally occurring water areas is discouraged. Discouraged uses can only be approved if it can be demonstrated that the proposed development is in the public interest and mitigation for the impact is provided.



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(c) Realignment of previously realigned water areas is conditionally acceptable, provided:

1. It is demonstrated that no adverse environmental impacts (that is, water quality, flood hazard, species diversity reduction/alteration) will result; and
2. A net recreational/ecological benefit will demonstrably accrue.

(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.19 Breakwaters**

(a) Breakwaters, including, but not limited to, those constructed of concrete, rubble mound and timber, are structures designed to protect shoreline areas or boat moorings by intercepting waves and reducing the wave energy which would normally impact the adjacent shoreline areas or boat mooring areas. Typically, timber breakwaters are designed and utilized to protect boat moorings. In most cases concrete or rubble mound breakwaters are designed and utilized to protect shoreline areas which are subject to storm waves and associated erosion.

(b) Construction of breakwaters is conditionally acceptable provided:

1. Timber, vinyl or plastic breakwaters shall be at least 18 inches above the bottom of the waterway and shall provide a minimum of three inch spacing between planks except as provided at (b)3 below. The individual plank width shall not exceed six inches; and
2. For detached breakwaters which are not fixed directly to a dock or pier structure, marking with photocell lights and/or reflectors is required; and
3. The construction of breakwater structures other than those which comply with (b)1 above shall be consistent with the acceptability conditions for Filling, N.J.A.C. 7:7E-4.10 and Structural Shore Protection N.J.A.C. 7:7E-7.11.

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.20 Submerged cables**

(a) Submerged cables (cables) are underwater lines such as telecommunication cables or electrical transmission lines, and shall include all associated structures in the water such as repeaters.

(b) Submerged cables, or portions thereof, which are not located in the Atlantic Ocean shall meet the following conditions:

1. The cable shall not be sited within Special Areas, unless no prudent and feasible alternate route exists;
2. Directional drilling for the installation of cables is encouraged over the use of trenching;
3. The cable route minimizes areas where anchors are likely to foul the cable; and
4. The alignment of the cable route is marked at the landfall. This provision does not apply to cables that are directionally drilled.

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(c) Submerged cables, or portions thereof, which are sited in the Atlantic Ocean shall meet the following conditions:

1. Siting a cable in the Atlantic Ocean is discouraged unless the cable complies with the following:

i. If the cable is either sited within Surf clam areas, N.J.A.C. 7:7E-3.3, or sited within areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear, no prudent and feasible land-based alternate route exists and the cable follows the shortest route to waters beyond the Surf clam areas and areas where Marine fish are commercially harvested using mobile bottom-tending gear; and

ii. If the cable is sited within Prime fishing areas, N.J.A.C. 7:7E-3.4, Shipwreck and artificial reef habitats, N.J.A.C. 7:7E-3.13, or Historic and archaeological resources, N.J.A.C. 7:7E-3.36, no prudent and feasible alternate route exists outside of these special areas and the cable follows the route with the least disturbance to these special areas;

2. The submerged cable, shall be buried to a depth of at least 1.2 meters both in Surf clam areas, N.J.A.C. 7:7E-3.3, and in areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear except where it is demonstrated that it is not practicable to bury the cable to 1.2 meters due to geologic or topographic features or crossing of existing in-service cables. Where it is demonstrated that achieving the depth of 1.2 meters is not practicable, the cable shall be buried as close as practicable to the above standard;

3. Where a submerged cable will cross an existing in-service cable either within Surf clam areas, N.J.A.C. 7:7E-3.3, or within areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear, the cable company shall minimize the impact of cable crossings on commercial fishing and minimize the risks to the proposed and existing cables, as follows:

i. The cable shall be buried to the depth of the existing cable or as close thereto as practicable at the crossing;

ii. The number of cable crossings shall be minimized;

iii. The location of the cable route shall be adjusted after consultation with the fishing interest groups identified in N.J.A.C. 7:7-4.2(a)3 in order to reduce the impact of cable crossings on commercial fishing, to the maximum extent practicable; and

iv. The permittee shall, to the maximum extent practicable, share information and otherwise cooperate with those responsible for any cables being crossed and with installers of subsequent cables crossing the subject cable so as to reduce the impacts of cable crossings on commercial fishing.

4. Where a submerged cable will cross an existing out-of service cable either within Surf clam areas, N.J.A.C. 7:7E-3.3, or within areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear, the cable company shall minimize the impact of cable crossings on commercial fishing and minimize the risks to the proposed and existing cables, as follows:

i. Where the out-of-service cable is buried less than 0.6 meter, the out-of-service cable shall be cut, and recovered for proper disposal for a distance of at least 500 meters on each side of the selected cable crossing. For surface laid out-of-service cables, the ends of the remaining out-of-service cable shall be re-laid flat on the seabed to minimize

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problems for other seabed users. For buried out-of-service cables, the ends of the remaining out-of-service cable shall be re-buried to the original depth;

ii. Where the out-of-service cable is buried between 0.6 and 1.2 meters, the out-of-service cable shall, if practicable, be cut and recovered for proper disposal for a distance of at least 500 meters on each side of the selected cable crossing. The ends of the remaining out-of-service cable shall be re-buried as close as practicable to the original depth, and in no case to a depth of less than 0.6 meters. If the out-of-service cable can not be cut and recovered, the cable crossing shall comply with (c)3 above; and

iii. Where the out-of-service cable is buried more than 1.2 meters, the cable shall be laid over the out-of-service cable at the depth prescribed in (c)2 above.

5. Directional drilling for the submerged cable landing is encouraged over the use of trenching to minimize impacts to beaches, dunes, and shallow water areas .

6. The submerged cable route minimizes areas where anchors are likely to foul the submerged cable.

7. Prior to installation of the cable, the permittee shall obtain a financial assurance from a lender or insurer regulated and authorized by the New Jersey Department of Banking and Insurance to transact business in New Jersey. The financial assurance shall be in an amount sufficient for the Department to hire an independent contractor to remove the inactive cable should the permittee fail to do so. Letters of credit, surety bonds and insurance assuring that the Department could hire an independent contractor to remove an inactive cable shall be acceptable to satisfy the financial assurance requirement. The financial assurance shall be released upon the permittee's removal of the cable or upon the Department's determination that the cable may remain in place in accordance with (c)11 below.

8. After the submerged cable has been installed, a long-term inspection and maintenance plan, approved by the Department, shall be implemented both within Surf clam areas, N.J.A.C. 7:7E-3.3, and within areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom tending gear, to insure that the cable remains at the authorized depth and location. The plan shall provide for the following:

i. An inspection immediately following cable installation;

ii. An inspection 2 years after cable installation;

iii. An inspection every 5 years after the inspection required at 8ii above;

iv. An investigation within six months after the Department reports to the permittee that it has received information suggesting that the cable has been uncovered. If appropriate, such investigation shall include an inspection of the cable. The Department may require an inspection after reviewing the report submitted pursuant to (c)9 below; and

v. Reburial of the cable within 90 days, if practicable, and in no case later than 6 months after the permittee discovers that the cable has been uncovered. Reburial shall be to the depth prescribed in (c)2 above to the maximum extent practicable.

9. A report containing the results of the initial inspection required in 8i above shall be submitted by the permittee to the Department within six months following the inspection. The report shall identify all areas where inactive cable has been cut and all areas where the cable is not buried to a depth of 1.2 meters, and indicate the actual depth in those areas. The report shall also provide the installed route of the cable. All locations shall be

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reported using latitude and longitude coordinate pairs, in the WGS 84 (World Geodetic System 1984) datum, that were arrived at using the global positioning system (GPS). To reduce the impacts of fishing on cables by notifying the commercial fishing industry of the locations of areas where the cable is buried less than 1.2 meters deep, a copy of the report shall be submitted to the fishing interest groups identified in N.J.A.C. 7:7-4.2(a)3.

10. A report containing the results of inspection and maintenance of the submerged cable required in 8 above, if applicable in the reporting year, a discussion of storm events which could have affected the cable, and reported hits of the cable for the previous year shall be submitted by the permittee to the Department in January of each year. The report shall also indicate if and when the cable becomes out-of-service.

11. Within two years of taking the cable out of service pursuant to Federal Communications Commission regulations, the submerged cable shall be removed both from Surf clam areas, N.J.A.C. 7:7E-3.3, and from areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear. The Department may allow all or portions of the cable to remain in place if leaving the cable in place would not result in a long term adverse impact to the ocean and/or ocean resources, and the cable would not unreasonably interfere with fishing or other uses of the seabed. A permittee who seeks to leave an inactive cable in place shall submit a request, including the reasons and justification for leaving the cable in place. The Department shall solicit public input on the request, including input from the fishing interest groups identified in N.J.A.C. 7:7-4.2(a)3.

12. If portions of the cable located either within Surf clam areas, N.J.A.C. 7:7E-3.3, or within areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear, are not buried to a depth of 0.6 meters, the permittee shall provide a one-time monetary contribution to the Department's dedicated account for shellfish habitat mitigation. The amount of each mitigation contribution provided under this section shall be based on the length of cable that is not buried to a depth of 0.6 meters, based on the inspection required in (c)8i above. The contribution will be calculated at the rate of \$100 per meter of cable which is buried to a depth of less than 0.6 meters. Moneys in the Shellfish Habitat Mitigation account are to be administered by the Department's Bureau of Shellfisheries and utilized for shellfish habitat restoration, enhancement and related research projects.

(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.21 Artificial reefs**

(a) Artificial Reefs are man-made structures intended to simulate the characteristics and functions of natural reefs created by placing hard structures on the sea-floor for the purpose of enhancing fish habitat and/or fisheries. In time, an artificial reef will attain many of the biological and ecological attributes of a natural reef. Artificial reefs do not include shore protection structures, pipelines, fish aggregating devices, and other structures not constructed for the sole purpose of fish habitat.

(b) New reefs shall be sited in accordance with the following:

1. The reef site shall not be located in the following special areas: surf clam areas (N.J.A.C. 7:7E 3.3), prime fishing areas (N.J.A.C. 7:7E-3.4), navigation channels

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(N.J.A.C. 7:7E-3.7), inlets (N.J.A.C. 7:7E-3.9), and Submerged infrastructure routes (N.J.A.C. 7:7E-3.12) and historic and archaeological resources (N.J.A.C. 7:7E-3.36);

2. The reef site shall be located in the Atlantic Ocean;
3. The reef site shall be located in a manner that minimizes impacts on commercial fishing operations;
4. The reef site shall not be located within shipping lanes, and/or anchorages;
5. The natural seafloor at the reef site shall have a firm substrate to minimize sinking of reef materials;
6. The reef site shall not be located within an area environmentally influenced by dredge disposal sites, sewage outfalls, or other areas known to experience hypoxic events, contaminated waters or sediment that may impair the quality of fish habitat; and
7. The reef site shall not be located in an area with currents that have the potential to cause material instability, scouring, or sanding over.

(c) Construction of new or expanded artificial reefs is conditionally acceptable provided that at the time of deployment, and at all times after creation, the following conditions are met:

1. The reef materials are of sufficient density so that it will not move outside of the approved reef boundary;

2. The reef materials shall not float;
3. The reef materials shall not pose a hazard to navigation;
4. The reef materials shall not pose a threat to the marine environment;
5. The reef materials shall not be toxic;
6. The reef materials shall not be hazardous;
7. The reef materials shall not be explosive;
8. The reef materials shall not be radioactive;

9. The following reef materials are acceptable for deployment, provided that (c)1 through 8 above are met:

- i. Ships;
- ii. Armored military vehicles;
- iii. Manufactured reef habitats;
- iv. Dredge rock;
- v. Concrete and steel rubble;
- vi. Demolition material free of floating debris;
- vii. Obsolete submarine telephone cable; and
- viii. Miscellaneous reef materials that meet the conditions in (c)1 through 8 above;

10. The reef material shall be deployed in the following manner:

- i. No materials shall be deposited until notification has been provided to the Department at least 72 hours in advance;
- ii. Inspection by the Department prior to deployment, to ensure materials are not harmful to the marine environment, and will not pose a threat to human safety, and comply with the reef material conditions (c)1 through 8 above;
- iii. Department personnel shall directly observe and oversee the deployment of any reef materials;
- iv. To the extent practicable, deployment of reef materials shall not adversely impact the marine environment; and

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v. The locations of artificial reef sites shall be recorded using a Global Positioning Satellite (GPS) system.

(d) An Artificial Reef Management Plan shall be submitted for each individual reef permit application and shall include the following:

1. A description of the proposed site;
2. A mechanism for recording materials used in constructing the reef; and
3. A monitoring schedule to measure the stability, durability and biological attributes of reef materials and impacts to the marine environment. The schedule shall include submission of monitoring reports, including a listing of materials deployed in the previous year, to the Department every year during reef construction, and every five years thereafter.

(e) It shall be the responsibility of the reef-builder to provide the location of the artificial reef to the US Department of Commerce, NOAA, National Ocean Survey, 1315 East-West Highway, Silver Spring, MD 20910-3282, for inclusion on nautical charts.

(f) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-4.22 Miscellaneous uses**

(a) Miscellaneous uses are uses of Water Areas not specifically defined in this section or addressed in the Use rules (N.J.A.C. 7:7E-7).

(b) Water dependent uses of Water Areas not identified in the Use rules will be analyzed on a case-by-case basis to ensure that adverse impacts are minimized. Non-water dependent uses are discouraged in all Water Areas.

(c) Rationale See the note at the beginning of this Chapter.

## **SUBCHAPTER 5. REQUIREMENTS FOR IMPERVIOUS COVER AND VEGETATIVE COVER FOR GENERAL LAND AREAS AND CERTAIN SPECIAL AREAS**

### **7:7E-5.1 Purpose and scope**

(a) This subchapter sets forth requirements for impervious cover and vegetative cover on sites in the upland waterfront development area, as defined at N.J.A.C. 7:7E-5.2, and in the CAFRA area, as defined at N.J.A.C. 7:7E-5.2. In addition:

1. For a site in the upland waterfront development area, the applicable impervious cover limits and vegetative cover percentages are determined under N.J.A.C. 7:7E-5A, based on the site's growth rating, development potential, and environmental sensitivity; and
2. For a site in the CAFRA area, the applicable impervious cover limits and vegetative cover percentages are determined under N.J.A.C. 7:7E-5B, based on the site's location in a coastal center; in a Coastal Planning Area; in a CAFRA center, CAFRA core, or CAFRA node; or on a military installation.

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(b) General Land Areas are all land areas, as defined at N.J.A.C. 7:7E-1.8, that are subject to this chapter and that are located outside of Special Water's Edge Areas. Special Water's Edge Areas are identified at N.J.A.C. 7:7E-3.16 through 3.32.

(c) This subchapter and N.J.A.C. 7:7E-5A and/or 5B apply to development in General Land Areas, Special Land Areas, and the following seven Special Water's Edge Areas:

1. N.J.A.C. 7:7E-3.17, Overwash areas;
2. N.J.A.C. 7:7E-3.18, Coastal high hazard areas;
3. N.J.A.C. 7:7E-3.19, Erosion hazard areas;
4. N.J.A.C. 7:7E-3.20, Barrier island corridor;
5. N.J.A.C. 7:7E-3.23, Filled water's edges;
6. N.J.A.C. 7:7E-3.24, Existing lagoon edges; and
7. N.J.A.C. 7:7E-3.25, Flood hazard areas.

(d) This subchapter and N.J.A.C. 7:7E-5A and 5B do not apply to:

1. The development of a single family home or duplex dwelling unless such development results in development of more than one single family home or duplex dwelling either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8;

2. A linear development, as defined in N.J.A.C. 7:7E-1.8, except that this subchapter and N.J.A.C. 7:7E-5A and 5B shall apply if the linear development is wholly within a development and/or serves the development;

3. A mining operation, under N.J.A.C. 7:7E-7.8;

4. A public park which is publicly owned, or publicly controlled for the purposes of public access;

5. Aquaculture, as defined at N.J.S.A. 58:1A-3;

6. Sanitary landfills;

7. Wastewater treatment plants; or

8. Water treatment plants.

(e) If a site is located in the Hackensack Meadowlands District, as defined under N.J.S.A. 13:17-1 et seq., the Department shall not apply the requirements in N.J.A.C. 7:7E-5 and 5A, but shall apply the requirements for that area set forth at N.J.A.C. 7:7E-3.45.

(f) A site may include land both within the upland waterfront development area and within the CAFRA area. Where this occurs each portion of the site is treated separately and the impervious cover limits and vegetative cover percentages for the different portions of the site are determined under N.J.A.C. 7:7E-5A or 5B as appropriate.

(g) The rules in this subchapter and N.J.A.C. 7:7E-5A and 5B do not preempt the application of any municipal ordinance that would result in more restrictive impervious cover requirements or more extensive vegetative cover requirements than would otherwise be applicable to a development site under this subchapter and N.J.A.C. 7:7E-5A and 5B.

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## **7:7E-5.2 Definitions**

In addition to the terms defined at N.J.A.C. 7:7E-1.8, the following words and terms are defined for purposes of this subchapter and N.J.A.C. 7:7E-5A and 5B:

"CAFRA center" means a center with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.3.

"CAFRA core" means a core with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.3.

"CAFRA node" means a node with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.3.

"CAFRA Planning Map" means the map used by the Department to identify the location of Coastal Planning Areas, CAFRA centers, CAFRA cores and CAFRA nodes. The CAFRA Planning Map is available on the Department's Geographic Information System (GIS).

"Center" means a compact form of development which may have one or more cores and residential neighborhoods. A center may be an urban center, regional center, town, village, or hamlet, based on factors such as comparative size, population density, total population, transportation access, infrastructure, and employment base.

"Coastal center" means a center in the CAFRA area with a boundary delineated by the Department for the purpose of applying the requirements for impervious cover and vegetative cover at N.J.A.C. 7:7E-5 and 5B until such time as, in accordance with N.J.A.C. 7:7E-5B.3, the coastal center expires or is superseded by the CAFRA center.

"Coastal Planning Area" means a planning area in the CAFRA area with a boundary incorporated by reference in accordance with N.J.A.C. 7:7E-5B.3.

"Community development boundary" means the line delineating a center from the environs of the center. The boundary is defined by physical features such as rivers, roads, or changes in the pattern of development, or by open space or farmland.

"Core" means a pedestrian-oriented area of commercial and civic uses serving the surrounding municipality or center, generally including some housing and access to public transportation.

"95-97 imagery" means the 1995-1997 National Aerial Photographic Program, New Jersey color infra-red imagery.

"Node" means a concentration of facilities and activities which are not organized in a compact form.



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"Planning area" means an area of greater than one square mile that shares a common set of conditions such as population density, infrastructure systems, level of development, or environmental sensitivity. The five types of planning areas are Metropolitan Planning Area, Suburban Planning Area, Fringe Planning Area, Rural Planning Area, and Environmentally Sensitive Planning Area.

"Stormwater management facility" means a facility which receives, stores, conveys, or discharges stormwater runoff and is designed in accordance with all applicable local, county, and State regulations. A stormwater management facility may be a retention or detention basin; infiltration structure; grassed swale; filter fabric; rip-rap channel; and/or stormwater outfall.

"Tidelands Map" means the Tidelands Base Photo Map, adopted by the Department's Tidelands Resource Council under N.J.S.A. 13:1B-13.1 et seq.

"Upland waterfront development area" means all lands outside of the CAFRA area extending from the mean high water line of a tidal water body to the first paved public road, railroad or surveyable property line existing on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line.

#### **7:7E-5.3 Impervious cover requirements that apply to sites in the upland waterfront development and CAFRA areas**

(a) This section sets forth impervious cover requirements that apply to sites in the upland waterfront development and CAFRA areas. Impervious cover limits, specific to each of these areas, are found at N.J.A.C. 7:7E-5A and 5B.

(b) A stormwater management facility is not counted toward the impervious cover limit for a site.

(c) The impervious cover allowed on a site shall be placed on the net land area on the site, as determined at (d) below, and in addition, for an unforested site under N.J.A.C. 7:7E-5A.9(b)3 or N.J.A.C. 7:7E-5B.3(e) 2, the impervious cover shall be placed on the area covered by buildings and/or asphalt or pavement legally existing on the site at the time the application is submitted to the Department. If the amount of impervious cover calculated under this subchapter, N.J.A.C. 7:7E-5A, and/or N.J.A.C. 7:7E-5B is greater than the net land area of the site, the acreage of the impervious cover allowed on the site shall be the acreage of the net land area. The placement of impervious cover may be further restricted by other provisions in this chapter. For example, placement of impervious cover would be discouraged in critical wildlife habitat under N.J.A.C. 7:7E-3.39.

(d) To determine the acreage of the net land area on a site:

1. Determine the acreage of the total land area on the site;
2. Identify all areas on the site that are classified as one of the following Special

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**Water's Edge Areas:**

- i. Dunes (N.J.A.C. 7:7E-3.16);
- ii. Bay islands (N.J.A.C. 7:7E-3.21);
- iii. Beaches (N.J.A.C. 7:7E-3.22);
- iv. Wetlands (N.J.A.C. 7:7E-3.27);
- v. Wetland buffers (N.J.A.C. 7:7E-3.28);
- vi. Coastal bluffs (N.J.A.C. 7:7E-3.31); and
- vii. Intermittent stream corridors (N.J.A.C. 7:7E-3.32);

3. Sum the acreage of the land areas identified in (d)2 above;
4. Subtract (d)3 above from (d)1 above; and
5. The result is the net land area to be used in calculating the impervious cover limits in N.J.A.C. 7:7E-5A and 5B.

(e) If a site or a portion of a site is a contaminated site, as defined at N.J.A.C. 7:26E-1.8 in the Department's Technical Requirements for the Remediation of Contaminated Sites, the impervious cover limit for the site may be increased if required under the Technical Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26E in order to properly remediate the contaminated portion of the site.

**7:7E-5.4 Vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas**

(a) This section sets forth vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas. Vegetative cover percentages, specific to each of these areas, are found at N.J.A.C. 7:7E-5A and 5B. More trees may be planted or preserved than required, and if so, the herb/shrub area shall be reduced proportionately.

(b) If a site is located in the northern waterfront region or urban area region in the upland waterfront development area; or if a site is located in a CAFRA center, CAFRA core, or CAFRA node; or if the area of trees on a site required to be planted and/or preserved as calculated under (b)1 below is smaller than one acre, the vegetative requirements with respect to trees are as follows:

1. The area (in acres) of the site that shall be planted in trees and/or preserved in trees is calculated under N.J.A.C. 7:7E-5A.10 or 5B.4; and
2. The area (in acres) of the site that would have been required under N.J.A.C. 7:7E-5A.10 or 5B.4 to be planted and/or preserved in trees is not subject to (d) or (e) below but shall instead be planted and/or preserved in a mix of trees and herb/shrub vegetation adapted to the substrate and other environmental conditions of the site.

(c) If a residential development of 24 units or fewer that is not part of a larger development is proposed on a site in the upland waterfront development area or in the CAFRA area and does not meet the criteria at (b) above, the vegetative requirements with respect to trees are as follows:

1. The area (in acres) of the site that shall be planted in trees and/or preserved in trees is calculated under N.J.A.C. 7:7E-5A.10 or 5B.4.
2. The area (in acres) of a forested site or portion to be preserved in trees is not

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subject to (d) below. However, the trees preserved shall be protected from any future development by a recorded conservation restriction enforceable by the Department which:

- i. Requires that the area of trees be preserved in its natural state;
  - ii. Prohibits removal or clearing of dead trees greater than five inches in diameter at four and one-half feet above ground except to prevent a safety hazard; and
  - iii. Prohibits removal, clearing or mowing of live vegetation, including trees, unless it is demonstrated to the Department that such removal will result in habitat enhancement;
- and

3. The area of an unforested site or portion to be planted in trees is not subject to (d) or (e) below but shall instead be planted and/or preserved in a mix of trees and/or herb/shrub vegetation adapted to the substrate and other environmental conditions of the site.

(d) For sites other than those that meet (b) or (c) above, when trees are required to be planted or preserved under N.J.A.C. 7:7E-5A or 5B, the trees shall be planted and/or preserved in a tree cluster as follows:

1. Trees preserved and/or planted shall be located in a cluster within the boundaries of one lot that shall not be further subdivided. However, on a site with existing non-contiguous forested areas larger than five acres each, the Department may require that a tree cluster be preserved on a lot located in each of the forested areas. The tree cluster should, to the maximum extent practicable, be adjacent to existing on-site or off-site forests or other natural resources, such as critical wildlife habitat areas as defined at N.J.A.C. 7:7E-3.39, or water bodies;

2. The boundaries of the tree cluster shall be clearly marked with permanent, visible markers such as concrete blocks or posts, metal stakes, or other easily seen, permanent, immovable markers;

3. The tree cluster shall be protected from any future development by a recorded conservation restriction, which requires that the tree cluster be preserved in its natural state, and prohibits removal or clearing of dead trees greater than five inches in diameter at four and one-half feet above ground except to prevent a safety hazard; and which prohibits removal, clearing or mowing of live vegetation, including trees, unless it is demonstrated to the Department that such removal will result in habitat enhancement;

4. For a residential development of 25 units or more, the recorded conservation restriction required under (d)3 above, shall be enforceable by the Department and:

- i. A local public entity;
  - ii. A private nonprofit organization whose trustees have no other interest in the land;
- or

iii. A homeowner's association; and

5. For a non-residential development, the recorded conservation restriction required under (d)3 above shall be enforceable by the Department and a local public entity or a private nonprofit organization whose trustees have no other interest in the land, unless no such entity or organization will agree to enforce the conservation restriction.

(e) Trees planted to meet the tree cluster requirement of (d) above shall be planted in accordance with the following:

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1. The trees shall be spaced approximately 10 feet apart, and shall be planted in a staggered, non-linear, pattern;
2. If a tree has lost more than 50 percent of its canopy within a full growing season after it is planted, it shall be immediately replaced with another tree as large as the first tree was when planted;
3. All trees shall be native or adapted to the substrate and other environmental conditions of the site. For example, many species common in inland areas are not well adapted to the acid sandy soils common along the coast;
4. The entire area of tree plantings shall be covered with a mulch of hardwood chips at least three inches deep;
5. Two-thirds of the trees planted shall be:
  - i. Canopy or dominant tree species which typically grow taller than 50 feet at maturity;
  - ii. A minimum of one and one half inches in diameter at the base; and
  - iii. Balled, burlapped and supported by staking with guy wires, which shall be removed after one year; and
6. The remaining one-third of the trees planted shall be:
  - i. Understory or subcanopy tree species which typically grow to a height of less than 50 feet at maturity;
  - ii. A minimum of four to five feet in height; and
  - iii. Balled and burlapped, or container-grown.

(f) Herb/shrub vegetation required under N.J.A.C. 7:7E-5A or 5B shall be adapted to the substrate and other environmental conditions of the site. For example, many species common in inland areas are not well adapted to the acid sandy soils common along the coast.

(g) The vegetative cover required on a site shall be planted or preserved only on the net land area determined under N.J.A.C. 7:7E-5.3(d).

#### **7:7E-5.5 Determining if a site is forested or unforested**

(a) The vegetative cover percentage that applies to a site under N.J.A.C. 7:7E-5A or 5B varies depending on whether the site is forested. If only a portion of a site is forested, separate vegetative cover percentages shall be calculated for the forested and unforested portions of the site.

(b) The following will be considered to be unforested for the purposes of determining vegetative cover percentages:

1. A site, as defined at N.J.A.C. 7:7E-1.8, which is smaller than one acre; and
2. An area of trees, smaller than one acre, that is surrounded on all sides by areas with fewer than one tree per 100 square feet.

(c) To determine if a site or portion of a site is forested:

1. Select two 25-foot by 25-foot plots in each acre of the site as follows:
  - i. The plots shall be located in the portion of each acre with the highest density of trees, as defined at N.J.A.C. 7:7E-1.8, based on a visual inspection;

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ii. If any half-acre of the site has fewer than one tree per 100 square feet, no plots need be selected on that half-acre;

iii. If the tree size and density are very uniform over some or all of the site, fewer plots may be selected in the area of uniformity;

2. In each plot, measure the diameter of each tree at four and one-half feet above ground;

3. Score each tree as follows:

Diameter of tree	Points
2 to 4 inches	1
>4 to 12 inches	2
> 12 inches	4

4. Add together the scores for all of the trees in the plot;

5. If the total score for a plot is equal to or greater than 16, the plot is forested. For example, if a 25-foot by 25-foot plot contains three trees which are three inches in diameter, three trees which are six inches in diameter, and three trees which are 15 inches in diameter, the score for the plot would be:  $(3 \times 1) + (3 \times 2) + (3 \times 4) = 21$ , and the plot is considered forested;

6. If a plot is forested, the Department shall assume that the half-acre of the site surrounding the plot is also forested, unless additional plots are sampled in that half-acre and the scores demonstrate that the half-acre is not entirely forested. In that case, a sufficient number of plots shall be sampled to delineate the forested portion of the half-acre; and

7. If a plot is unforested, the Department shall assume that the half-acre of the site surrounding the plot is also unforested, unless a site visit, photographs, or other information indicates that it contains forested areas.

## **IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE UPLAND WATERFRONT DEVELOPMENT AREA**

### **7:7E-5A.1 Purpose and scope**

This subchapter sets the impervious cover limits and vegetative cover percentages for sites in the upland waterfront development area, as defined at N.J.A.C. 7:7E-5.2. For a site in the upland waterfront development area, impervious cover limits and vegetative cover percentages are based on the growth rating, environmental sensitivity, and development potential, and on whether the site is forested or unforested.

### **7:7E-5A.2 Upland waterfront development area regions and growth ratings**

(a) The growth rating for a site in the upland waterfront development area is determined by the region in which it is located, and the growth rating assigned to that region.

(b) The growth ratings are as follows:

*Note: This is a courtesy copy of the Coastal Zone Management rules. The official version is in the New Jersey Administrative Code (N.J.A.C. 7:7E). Should there be any discrepancies between the courtesy copy and the official version, the official version will govern.*

1. A development growth rating is assigned to regions of the upland waterfront development area that are already largely developed. Development in regions with this growth rating is preferred over development in regions with limited growth and extension growth ratings;

2. An extension growth rating is assigned to regions of the upland waterfront development area that qualify for neither a development growth rating nor a limited growth rating; and

3. A limited growth rating is assigned to regions of the upland waterfront development area that contain large environmentally sensitive areas.

(c) The eight different regions and their growth ratings are based on their respective patterns of development and cultural and natural resources.

(d) The regions are as follows:

1. The urban area region, which is the land within the upland waterfront development area that is within a special urban area, as described at N.J.A.C. 7:7E-3.43;

2. The northern waterfront region, which is the land within the upland waterfront development area within Monmouth County, and extending north from Monmouth County to the New York State boundary;

3. The western ocean region, which is the land within the upland waterfront development area that is within Ocean County, west of the Garden State Parkway and south of State Route 37;

4. The southern region, which is the land within the upland waterfront development area that is in Cape May County (but not located in the Great Egg Harbor River region);

5. The Mullica-southern ocean region, which is:

i. The land in Ocean County within the upland waterfront development area that is south of Cedar Run Creek and west of U.S. Route 9;

ii. The land within the upland waterfront development area in Bass River Township, Burlington County; and

iii. The land within the upland waterfront development area in Atlantic County that is north of County Route 561 (Jimmy Leeds Road);

6. The Great Egg Harbor River region, which is:

i. The land within the upland waterfront development area in Atlantic County that is southwest of County Alternate Route 559; and

ii. The land within the upland waterfront development area in Cape May County that is east of State Highway 50, north of County Route 585, and west of U.S. Route 9;

7. The Delaware River region, which is:

i. The land within the upland waterfront development area in the municipalities of Bridgeton and Millville in Cumberland County and Salem in Salem County; and

ii. The land within the upland waterfront development area in Salem County (but not located in the Delaware estuary region), and extending north from Salem County through Gloucester County, Camden County, Burlington County (but not located in Bass River Township), and Mercer County; and

8. The Delaware estuary region, which is:

i. The land within the upland waterfront development area in Cumberland County (but not located in the municipalities of Bridgeton and Millville); and

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ii. The land within the upland waterfront development area in Salem County that is south and east of a boundary formed by Interstate 295 from its intersection with the New Jersey Turnpike to County Route 641; County Route 641 from its intersection with the New Jersey Turnpike to U.S. Route 130; U.S. Route 130 from its intersection with County Route 641 to its intersection with Oldmans Creek (but not located within the municipality of Salem).

(e) The growth ratings assigned to the regions described in (d) above are as follows:

1. The following regions are assigned a development growth rating:

- i. Urban area region;
- ii. Northern waterfront region; and
- iii. Delaware River region;

2. The following regions are assigned an extension growth rating:

- i. Western ocean region; and
- ii. Southern region; and

3. The following regions are assigned a limited growth rating:

- i. Mullica-southern ocean region;
- ii. Great Egg Harbor River region; and
- iii. Delaware estuary region.

#### **7:7E-5A.3 Environmental sensitivity**

(a) The environmental sensitivity of a site is based on the soil type and the depth to seasonal high water table or the presence of paving or structures. Different portions of a site may have different environmental sensitivities.

(b) A site or portion of a site has a high environmental sensitivity if it has wet or high permeability moist soils.

1. Wet or high permeability moist soils are soils with a depth to seasonal high water table of three feet or less, unless the soils are loamy sand or coarser as defined by the United States Department of Agriculture's Soil Texture Triangle, in which case they are soils with a depth to seasonal high water table of four feet or less.

(c) A site or portion of a site has a medium environmental sensitivity if it has neither a high environmental sensitivity nor a low environmental sensitivity.

(d) A site or portion of a site has a low environmental sensitivity if the depth to seasonal high water table is greater than five feet, or the site or portion of the site has paving or structures at the time the application is submitted.

#### **7:7E-5A.4 Development potential**

(a) Development potential is determined by the type of development proposed and the presence or absence of certain development-oriented elements at or near the site of the proposed development, including roads; wastewater conveyance, treatment and disposal system; and existing development. Development potential may be high, medium or low, as determined under N.J.A.C. 7:7E-5A.5 through 5A.7. A single development potential applies to an entire site.

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(b) If a development proposed on a site is inconsistent with the applicable Areawide Water Quality Management Plan adopted under N.J.A.C. 7:15, the development potential cannot be determined for the site. Any development that is inconsistent with the applicable Areawide Water Quality Management Plan is prohibited under N.J.A.C. 7:7E-8.4(b).

(c) The types of development are:

1. Residential or minor commercial development, which includes housing, hotels, motels, minor commercial facilities of a neighborhood or community scale with 700 or fewer parking spaces and less than 100,000 square feet of enclosed building area, and mixed use developments that are predominantly residential. For the purposes of this section and N.J.A.C. 7:7E-5A.5, residential or minor commercial development also includes libraries, daycare centers, municipal or other government administrative, public works or emergency service buildings, and churches, synagogues or other houses of worship;

2. Major commercial or industrial development, which includes all industrial development, warehouses, offices, manufacturing plants, energy facilities, wholesale and major shopping centers with more than 100,000 square feet of enclosed building area, and major parking facilities with more than 700 parking spaces. For the purposes of this section and N.J.A.C. 7:7E-5A.6, major commercial or industrial development also includes solid waste facilities and wastewater treatment plants; and

3. Campground development, which provides facilities for visitors to enjoy the natural resources of the State. Typically, this type of development is suited to sites somewhat isolated from other development and with access to water, beach, forest and other natural amenities.

(d) The development potential for a site shall be determined as follows:

1. If a proposed development is a residential or minor commercial development as described at (b)1 above, the development potential for the site is determined under N.J.A.C. 7:7E-5A.5;

2. If a proposed development is a major commercial or industrial development as described at (b)2 above, the development potential for the site is determined under N.J.A.C. 7:7E-5A.6; and

3. If a proposed development is a campground development as described at (b)3 above, the development potential for the site is determined under N.J.A.C. 7:7E-5A.7.

(e) If a proposed development is not a residential development, a minor commercial development, a major commercial development, an industrial development, or a campground development, the development potential for the site shall be that for the most similar type of development described at (b) above.

#### **7:7E-5A.5 Development potential for a residential or minor commercial development site**

(a) Subject to the limitation at N.J.A.C. 7:7E-5A.4(b), the development potential for a residential development site or a minor commercial development site is determined using (b) through (d) below.



*Note: This is a courtesy copy of the Coastal Zone Management rules. The official version is in the New Jersey Administrative Code (N.J.A.C. 7:7E). Should there be any discrepancies between the courtesy copy and the official version, the official version will govern.*

(b) A site upon which a residential or minor commercial development is proposed is a high development potential site if it meets all of the requirements at (b)1 through 4 below:

1. An existing paved public road abuts the site;
2. If an offsite wastewater conveyance, treatment and disposal system is to be used:
3. A majority of the perimeter of the site, excluding wetlands or surface water areas or land areas abutting limited access transportation corridors, is adjacent to or across a public road or railroad from land that is developed, or a majority of the area, excluding wetlands or surface water areas, within 1,000 feet of the site is developed. For the purposes of this paragraph, developed land consists of that part of a property where one of the developments listed below is located and does not include any undeveloped portions of the property that surround the developed portion:
  - i. Residential development at densities of at least one dwelling unit per acre;
  - ii. Commercial development;
  - iii. Industrial development, including warehouses;
  - iv. Schools and other public institutions;
  - v. Ball fields;
  - vi. Those areas of public parks developed for active recreational use; or
  - vii. Transportation facilities including train stations and airfields; and
4. If the site is located in a region with a limited growth or extension growth rating, the site shall, in addition to meeting the requirements at (b)1 through 3 above, be located one-half mile or less from the nearest existing commercial or industrial development that has more than 20,000 square feet of enclosed building area within a single facility.

(c) A site upon which a residential development or a minor commercial development is proposed is a medium development potential site if it is not a high development potential site under (b) above but does meet the requirements of either (c)1 or 2 below:

1. The site is located in a region with a development growth rating and the site is located:
  - i. One thousand feet or less from the nearest existing paved public road, or 1,000 feet or less from the nearest public road that is approved and will be constructed before or concurrently with the development; and
  - ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the conveyance component of that system, or 1,000 feet or less from the conveyance component of a system that is approved and shall be constructed before or concurrently with the development, provided:
    - (1) The wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; or
2. The site is located in a region with a limited growth or extension growth rating and the site is located:
  - i. One thousand feet or less from the nearest existing paved public road;
  - ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the existing conveyance component of the system, provided:

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(1) The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity;

iii. If a commercial development is proposed, one-half mile or less from the nearest existing commercial or industrial development that has more than 20,000 square feet of enclosed building area within a single facility; and

iv. If a residential development is proposed, one-half mile or less from developed land, as described at (b)3 above.

(d) A site upon which a residential or minor commercial development is proposed is a low development potential site if it is neither a high development potential site under (b) above nor a medium development potential site under (c) above.

#### **7:7E-5A.6 Development potential for a major commercial or industrial development site**

(a) Subject to the limitations at N.J.A.C. 7:7E-5A.4(c)4, the development potential for a major commercial or industrial development site is determined under (b) through (d) below.

(b) A site upon which a major commercial or industrial development is proposed is a high development potential site if it meets all of the requirements at (b)1 through 4 below:

1. An existing paved public road abuts the site;

2. If an offsite wastewater conveyance, treatment and disposal system is to be used:

i. The existing conveyance component of the system abuts the site; and

ii. The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity;

3. A part of the perimeter of the site is adjacent to, or immediately across a paved road from, existing major commercial or industrial development, or, in a region with a development growth rating, the site is adjacent to or immediately across a paved road from any existing commercial development; and

4. In a region with a limited growth or extension growth rating, the site is located either:

i. For a major commercial development, within two miles of an existing intersection with a limited access highway; or

ii. For an industrial development, either within:

(1) Two miles of an existing intersection with a limited access highway; or

(2) One-half mile of a freight rail line that shall be used, or the applicant has a written agreement with the owner of a freight rail line to obtain freight rail service directly to the site.

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(c) A site upon which a major commercial or industrial development is proposed is a medium development potential site if it is not a high development potential site under (b) above but does meet the requirements at either (c)1 or 2 below:

1. The site is located in a region with a development growth rating and the site is located:

i. One thousand feet or less from the nearest existing paved public road, or 1,000 feet or less from the nearest public road that is approved and shall be constructed before or concurrently with the development;

ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the conveyance component of that system, or 1,000 feet or less from the conveyance component of a system that is approved and shall be constructed before or concurrently with the development, provided:

(1) The wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; and

iii. For an industrial development, one-half mile or less from the nearest existing commercial or industrial development that has more than 50,000 square feet of enclosed building area within a single facility; or

2. The site is located in a region with a limited growth or extension growth rating and the site is located:

i. Either 1,000 feet or less from the nearest existing paved public road, or five miles or less from the nearest intersection with a limited access highway;

ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the existing conveyance component of the system, provided:

(1) The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; and

iii. One-half mile or less from the nearest commercial or industrial development that has more than 50,000 square feet of enclosed building area within a single facility.

(d) A site upon which a major commercial or industrial development is proposed is a low development potential site if it is neither a high development potential site under (b) above nor a medium development potential site under (c) above.

#### **7:7E-5A.7 Development potential for a campground development site**

(a) Subject to the limitations at N.J.A.C. 7:7E-5A.4(b), the development potential for a campground development site is determined using (b) through (d) below.

(b) A site upon which a campground development site is proposed is a high development potential site if it meets all of the requirements at (b)1 through 3 below:

1. An existing paved public or private road abuts the site;

2. If an offsite wastewater conveyance, treatment and disposal system is to be used:

i. The existing conveyance component of the system abuts the site; and

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ii. The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; and

3. The land surrounding the site is natural; undeveloped; contains beaches, streams, or forests; and is readily accessible by foot to campground users.

(c) A site upon which a campground development is proposed is a medium development potential site if it is not a high development site under (b) above but does meet the requirements of (c)1 and 2 below:

1. The site is one-half mile or less from the nearest existing paved public road; and

2. If an offsite wastewater conveyance, treatment, and disposal system is to be used, the site is 1,000 feet or less from the existing conveyance component of that system, provided:

i. The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity.

(d) A site upon which a campground development is proposed is a low development potential site if it is neither a high development potential site under (b) above nor a medium development potential site under (c) above.

#### **7:7E-5A.8 Development intensity**

(a) The development intensity for a site is based on growth rating, environmental sensitivity, and development potential. Tables A through C below are used to determine the development intensity of a site or portion of a site. Because environmental sensitivity may be different for different portions of a site, development intensity can also be different for different portions of a site.

(b) To determine the development intensity for a site:

1. Determine the growth rating for the site under N.J.A.C. 7:7E-5A.2;

2. Determine the environmental sensitivity for each portion of the site under N.J.A.C. 7:7E-5A.3;

3. Determine the development potential for the site based on the site and the type of development under N.J.A.C. 7:7E-5A.4 through 5A.7;

4. Consult Table A, B, or C below as follows:

i. For a site with a development growth rating, consult Table A;

ii. For a site with an extension growth rating, consult Table B; and

iii. For a site with a limited growth rating, consult Table C.

TABLE A  
Development Intensity for a Site with a Development Growth Rating

Low	Medium	High
Environmental	Environmental	Environmental

Effective February 3, 2003

Note: This is a courtesy copy of the Coastal Zone Management rules. The official version is in the New Jersey Administrative Code (N.J.A.C. 7:27E). Should there be any discrepancies between the courtesy copy and the official version, the official version will govern.

	Sensitivity	Sensitivity	Sensitivity
High Development Potential	High Development Intensity	High Development Intensity	Medium Development Intensity
Medium Development Potential	High Development Intensity	High Development Intensity	Low development Intensity
Low Development Potential	Low Development Intensity	Low Development Intensity	Low Development intensity

TABLE B  
Development Intensity for a Site with an Extension Growth Rating

	Low Environmental Sensitivity	Medium Environmental Sensitivity	High Environmental Sensitivity
High Development Potential	High Development Intensity	High Development Intensity	Medium Development Intensity
Medium Development Potential	Medium Development Intensity	Medium Development Intensity	Low Development Intensity
Low Development Potential	Low Development Intensity	Low Development Intensity	Low Development Intensity

TABLE C  
Development Intensity for a Site with a Limited Growth Rating

	Low Environmental Sensitivity	Medium Environmental Sensitivity	High Environmental Sensitivity
High Development Potential	Medium Development Intensity	Medium Development Intensity	Low Development Intensity
Medium Development Potential	Medium Development Intensity	Low Development Intensity	Low Development Intensity
Low	Low	Low	Low

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Development Potential	Development Intensity	Development Intensity	Development Intensity
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#### **7:7E-5A.9 Impervious cover limits for a site in the upland waterfront development area**

(a) If a site or portion of a site is forested, as determined under N.J.A.C. 7:7E-5.5, the impervious cover limit is the acreage of the net land area on the site or portion as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table D below for the development intensity that applies to the site or portion, as determined under N.J.A.C. 7:7E-5A.8.

(b) If a site or portion of a site is unforested, as determined under N.J.A.C. 7:7E-5.5, the impervious cover limit is the limit at (b)1, 2 or 3 below, whichever is higher:

1. The acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table E below for the development intensity that applies to the site or portion, as determined under N.J.A.C. 7:7E-5A.8;

2. For a site located in the northern waterfront region or urban area region, as determined under N.J.A.C. 7:7E-5A.2(d), the amount of existing impervious cover located on a site as determined under (c) below; or

3. For a site located in a region other than those identified at (b)2 above, the acreage covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department.

(c) For the purposes of determining impervious cover limits under (b) above, the amount of existing impervious cover is the highest of the following, provided the impervious cover was legally placed on the site:

1. The amount of impervious cover located on the site at the time the application is submitted to the Department;

2. The amount of impervious cover that appears on the applicable Tidelands Map, as defined at N.J.A.C. 7:7E-5.2; or

3. The amount of impervious cover that was placed on the site under the authority of a coastal permit and after the date the photography was performed for the Tidelands Map identified under (c)2 above.

**TABLE D**  
Percentages for Calculating Impervious Cover Limit  
for a Forested Site under N.J.A.C. 7:7E-5A.9

Development intensity	Impervious Cover Percentage
High development intensity	70 percent
Medium development intensity	40 percent
Low development intensity	5 percent

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**TABLE E**  
**Percentages for Calculating the Impervious Cover Limit**  
**For an Unforested Site under N.J.A.C. 7:7E-5A.9**

Development intensity	Impervious Cover Percentage
High development intensity in the urban area region	90 percent
High development intensity not in the urban area region	80 percent
Medium development intensity	40 percent
Low development intensity	5 percent

**7:7E-5A.10 Vegetative cover percentages for a site in the upland waterfront development area**

(a) The area (in acres) on a site in the upland waterfront development area in which trees and/or herb/shrub vegetation shall be planted or preserved is calculated as follows:

1. To determine the area (in acres) of tree preservation and/or tree planting on the site:

i. Identify the forested and/or unforested portions of the site, as determined under N.J.A.C. 7:7E-5.5;

ii. If a site or portion of a site identified at (a)1i has more than one development intensity, further divide that site or portion into smaller portions based on their respective development intensities;

iii. For each forested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d), by the tree preservation and tree planting percentages in Table F below for the development intensity that applies to the site or portion, as determined under N.J.A.C. 7:7E-5A.8; and

iv. For each unforested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d), by the tree planting percentage in Table G below for the development intensity that applies to the site or portion, as determined under N.J.A.C. 7:7E-5A.8; and

2. To determine the area (in acres) of herb/shrub vegetation preservation and/or herb/shrub vegetation planting on the site:

i. For each portion of the site identified at (a)1ii above, subtract both the acreage of impervious cover allowed under N.J.A.C. 7:7E-5A.9 and the acreage of tree planting and/or preservation required under (a)1 above from the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d).

(b) If the sum of the acreage of tree planting required under (a)1 above plus the acreage of either the existing impervious cover on the site as determined under N.J.A.C. 7:7E-5A.9(b)2 or the acreage covered by buildings and/or asphalt or concrete pavement as determined under N.J.A.C. 7:7E-5A.9(b)3 exceeds the net land area on the site, as determined under N.J.A.C. 7:7E-5.3, then trees shall be planted in the area (in acres) remaining after the acreage of impervious cover or acreage covered by buildings and/or

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asphalt or concrete pavement is subtracted from the acreage of the net land area on the site.

(c) The preservation or planting of trees and/or herb/shrub vegetation areas shall comply with the vegetative cover requirements at N.J.A.C. 7:7E-5.4.

1. The requirement for tree planting at (a)1 above can be satisfied by preserving equivalent forested areas in addition to that required under (a)1 above.

2. The requirement for planting of herb/shrub vegetation at (a)2 above can be satisfied by preserving equivalent wooded areas or planting an equivalent area of trees in addition to that required under (a)1 above.

TABLE F  
Tree Preservation and Planting  
Percentages for a Forested Site

Development intensity	Tree Preservation Percentage	Tree Preservation and/or Planting Percentage
High development intensity in an urban area region	25 percent	5 percent
Medium development intensity	25 percent	5 percent
Low development intensity	30 percent	0 percent

TABLE G  
Tree Planting Percentages for an Unforested Site

Development intensity	Tree Preservation and/or Planting Percentage
High development intensity	5 percent
Medium development intensity	20 percent
Low development intensity	5 percent

## **SUBCHAPTER 5B. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE CAFRA AREA**

### **7:7E-5B.1 Purpose and scope**

(a) This subchapter sets impervious cover limits and vegetative cover percentages for sites in the CAFRA area. For a site in the CAFRA area, impervious cover limits and vegetative cover percentages are based on the site's location in a coastal center; in a Coastal Planning Area; in a CAFRA center, CAFRA core, or CAFRA node; or on a military installation.

(b) Except as may be required by law, it is not the intent of this subchapter that the extent to which a municipality has or has not conformed its ordinances or development master plan to this subchapter be considered by any department, agency, or instrumentality of State government in:



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1. Administering any State grant, loan, or any financial assistance program involving the expenditure of State funds;
2. Making any permitting decision involving infrastructure that is deemed necessary by the permitting authority to alleviate significant and imminent threats to public health and safety; or
3. Making any permitting decision involving transportation infrastructure deemed necessary by the permitting authority solely to meet the needs of existing populations or anticipated populations based on valid development approvals by all relevant entities at the time of permit application, provided the permit application meets all of the substantive requirements of this chapter.

(c) Subsection (b) above shall not be construed to limit the ability of any department, agency, or instrumentality of State government to give preferential treatment to any municipality that is certified as a Sector Permit municipality under N.J.A.C. 7:7-9.

(d) Subsection (b) above shall not be construed to:

1. Prevent the awarding of any financial assistance, grant, or loan for planning purposes;
2. Contravene the legislative intent concerning capital projects pursuant to N.J.S.A. 52:9S-2 et seq.;
3. Contravene the legislative intent concerning coastal planning policies pursuant to N.J.S.A. 52:18A-206; or
4. Prevent the Department from considering secondary impacts in accordance with N.J.A.C. 7:7E-6.3.

(e) Compliance with the impervious cover limits and vegetative cover percentages of this subchapter shall not exempt any development from the Special Areas rules at N.J.A.C. 7:7E-3, the resource rules at N.J.A.C. 7:7E-8, or any other provision of this chapter.

#### **7:7E-5B.2 Coastal Planning Areas**

(a) For purposes of this subchapter and consistent with all other rules in this chapter, descriptions and policy objectives for the Coastal Planning Areas are set forth in (b) through (f) below.

(b) The Coastal Metropolitan Planning Area includes a variety of communities on the New Jersey coast. This Coastal Planning Area generally has a high population density and existing public water and sewer systems. The policy objectives for the Coastal Metropolitan Planning Area are as follows:

1. Guide development and redevelopment to ensure efficient use of scarce land while capitalizing on the inherent public facility and service efficiencies of concentrated development patterns;
2. Accommodate a variety of housing choices through development and redevelopment;

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3. Promote economic development by encouraging redevelopment efforts such as infill, consolidation of property, and infrastructure improvements, and by supporting tourism and related activities;

4. Promote high-density development patterns in coastal urbanized areas to encourage the design and use of public transit and alternative modes of transportation to improve air quality, to improve travel among population and employment centers and transportation terminals, and to promote transportation systems that address the special seasonal demands of travel and tourism along the coast;

5. Encourage the reclamation of environmentally damaged sites and mitigate future negative impacts, particularly to waterfronts, beaches, scenic vistas, and habitats;

6. Promote public recreation opportunities in development and redevelopment projects, and ensure meaningful public access to coastal waterfront areas; and

7. Encourage the repair or replacement of existing infrastructure systems where necessary to ensure that existing and future development will cause minimal negative environmental impacts.

(c) The Coastal Suburban Planning Area is generally located adjacent to the more densely developed Coastal Metropolitan Planning Area, but can be distinguished by a lack of high intensity centers and by a more dispersed and fragmented pattern of development. The existing inventory of undeveloped and underdeveloped land in this Coastal Planning Area should be sufficient to accommodate much of the market demand for future growth and development in the CAFRA area. Internally oriented, mixed-use centers should be encouraged in the Coastal Suburban Planning Area. While development patterns are well established here, development intensities should be highest within CAFRA centers to concentrate development and take advantage of infrastructure efficiencies. Development in the Coastal Suburban Planning Area outside of centers should be less intense than in centers, and less intense than in the Coastal Metropolitan Planning Area. Development in areas not in centers and not in or adjacent to an existing sewer service area should be less intense than in other parts of the Coastal Suburban Planning Area. The policy objectives for the Coastal Suburban Planning Area are as follows:

1. Encourage mixed-use development and redevelopment in compact centers;

2. Guide opportunities for economic development and employment in centers, and promote seasonal and year-round travel and tourism activities in the coastal resort areas;

3. Encourage links from coastal suburban areas to employment centers with public transit, and promote transportation systems that address the special seasonal demands of travel and tourism along the coast; and

4. Ensure adequate wastewater treatment capacity, and minimize off-site stormwater runoff by encouraging the use of best management practices which protect the character of natural drainage systems.

(d) The Coastal Fringe Planning Area is generally located adjacent to the Coastal Metropolitan Planning Area or the Coastal Suburban Planning Area. It is a predominantly rural area that is neither prime agricultural nor environmentally sensitive land, but which supports agriculture and other resource-based activities. The Coastal Fringe Planning Area is served primarily by a rural, two-lane road network and on-site well water and

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wastewater systems. It generally lacks public wastewater systems except in existing centers. This Coastal Planning Area is characterized by scattered small settlements and free-standing residential and commercial developments. The policy objectives for the Coastal Fringe Planning Area are as follows:

1. Encourage development in more compact, deliberately designed community patterns to minimize land conflicts and to accommodate growth that would otherwise occur elsewhere, encourage development that does not exceed the carrying capacity of natural or built systems and that maintains or enhances the character of existing communities, and maintain existing low-density and low-intensity development patterns that do not exceed the carrying capacity of natural systems and are consistent with the existing landscape;
2. Encourage rural economic activities, such as agriculture and recreation, and guide higher intensity activities to the centers;
3. Encourage transportation systems that link centers in the Coastal Fringe Planning Area to each other and to the Coastal Metropolitan and Coastal Suburban Planning Areas; and
4. Encourage infrastructure that supports development in centers.

(e) The Coastal Rural Planning Area generally contains most of the CAFRA area's remaining prime agricultural land, as well as large contiguous tracts of forested areas and other open lands. It is interspersed with centers and with scattered commercial, industrial, and low density residential development. It is served by rural road networks and on-site wastewater and water supply systems. The Coastal Rural Planning Area also supports rural economic activities such as recreation related business. The policy objectives for the Coastal Rural Planning Area are as follows:

1. Protect and enhance the rural character and agricultural viability of the Coastal Rural Planning Area by guiding growth into centers, maintain existing low-density and low-intensity development patterns that are supporting rather than conflicting with the rural landscape, encourage creative land use techniques to minimize the impact of new development on rural features, and ensure that development does not exceed the capacity of natural and built systems;
2. Encourage a transportation network that accommodates agriculture and access to markets;
3. Encourage economic activities in centers that complement and support rural and agricultural communities and that provide diversity in the rural economy, accommodate economic activities outside of centers in ways that maintain or enhance the rural environment, have minimal impact on agricultural resources, and minimize the need for infrastructure improvements; and
4. Protect and preserve large contiguous areas of farmland and open space, and protect the critical resources and environmentally sensitive features of the coastal ecosystem, including water resources and wildlife habitat, by maintaining development outside of centers at low densities, and minimize conflicts between development, agricultural practices, resource based activities, and sensitive coastal resources.

(f) The Coastal Environmentally Sensitive Planning Area generally has large contiguous land and water areas with critical coastal ecosystems, wildlife habitats,

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geological features, and other valuable coastal resources. Some of these lands have remained rural and relatively undeveloped, while others have been dominated by development for many years, such as the coastal barrier islands and spits. The barrier islands represent a major public investment in infrastructure systems that should be maintained while protecting the economic and ecological value of adjacent coastal resources. Centers on the barrier islands are almost all served by public wastewater facilities whereas centers in other environmentally sensitive areas are not often. Centers are usually linked by rural roads and separated by open spaces, or linked to the mainland by State highways crossing coastal wetlands and waterways. Areas outside of centers in the Coastal Environmentally Sensitive Planning Area are by definition more vulnerable to disturbance from new development. Damage may include fragmentation of landscapes, degradation of aquifers and potable water supplies, habitat destruction, extinction of plant and animal species, and destruction of other irreplaceable resources that are vital to the preservation of the ecological integrity of the coastal area. The Coastal Environmentally Sensitive Planning Area also supports recreation and tourism industries, and resource based industries such as mining and forestry. The policy objectives for the Coastal Environmentally Sensitive Planning Area are as follows:

1. Protect environmentally sensitive features by guiding development into centers and maintaining low intensity development patterns elsewhere, carefully link the location, character and magnitude of development to the capacity of natural and built environments to support new growth, accommodate development at higher intensities in the Coastal Environmentally Sensitive Planning Area barrier island centers, compatible with development patterns in existing centers, and discourage the development of public infrastructure facilities outside of centers;
2. Encourage transportation systems that link centers and support the travel and tourism industry, recreational and natural resource-based activities, and address the special seasonal demands of travel and tourism to barrier islands;
3. Locate economic development opportunities in centers that serve the surrounding region and the travel and tourism industry and accommodate in other areas appropriate seasonal, recreational, and natural resource based-activities that have a minimal impact on environmental resources; and
4. Protect sensitive natural resources critical to the maintenance of coastal ecosystems by maintaining large contiguous areas of undisturbed habitat, open space and undeveloped land, maintain the balance of ecological systems and growth, and protect the areas outside of centers from the effects of development by maintaining it as open space.

#### **7:7E-5B.3 Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Coastal centers**

(a) The boundaries of the Planning Areas, the community development boundaries of centers, and the boundaries of cores and nodes formally approved by the State Planning Commission as of August 1, 1999 are incorporated by reference into this subchapter. These boundaries are the boundaries of the Coastal Planning Areas, CAFRA centers, CAFRA Cores and CAFRA nodes and shall be operative for the purposes of applying the requirements for impervious cover and vegetative cover under N.J.A.C. 7:7E-5 and this subchapter, unless the Department, in accordance with (b) and (c) below, accepts a State Planning Commission formally approved new or changed boundary, or unless the

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Department, in accordance with (b) and (e) below, rejects a State Planning Commission formally approved new or changed boundary and subsequently promulgates a revised boundary.

(b) Whenever the State Planning Commission formally approves (see (h) below) any new or changed Planning Area boundary, any new or changed community development boundary, or any new or changed core or node boundary, the Department shall evaluate the new or changed boundary to determine whether it is consistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and this chapter. The Department shall not reject or reject and revise a boundary unless it finds that accepting the State Planning Commission approved boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be clearly inconsistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., or this chapter. For those new or changed community development boundaries or new or changed core or node boundaries which are located within the Pinelands National Reserve, the Department shall also, in consultation with the New Jersey Pinelands Commission, determine whether the boundaries are consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). Within 90 calendar days after the date on which the State Planning Commission formally approves such boundary, the Department shall publish in the New Jersey Register a notice of its determination to accept, reject, or reject and revise the boundary for the purposes of N.J.A.C. 7:7E-5 and this subchapter.

(c) If the Department determines under (b) above to accept the State Planning Commission formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary, the accepted new or changed boundary is incorporated by reference as the boundary of the Coastal Planning Area, CAFRA center, CAFRA core and CAFRA node, and shall be operative 30 calendar days after the date of publication of the New Jersey Register notice under (b) above. A CAFRA center boundary shall supersede the boundary for a corresponding coastal center, if any, in Appendix 2 or Appendix 3, as applicable. CAFRA centers are listed for informational purposes in Appendix 4 of this chapter. As part of the New Jersey Register notice published under (b) above, the Department shall incorporate into Appendix 4 by administrative change the name of each CAFRA center for which the Department has accepted the boundary. However, in order to determine the location of a site with reference to the accepted boundaries of a CAFRA center, CAFRA core, or CAFRA node for purposes of determining the applicable impervious cover limit, an applicant shall refer to the CAFRA Planning Map in accordance with N.J.A.C. 7:7E-5B.4(b).

(d) If the Department determines under (b) above to reject the State Planning Commission formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary, the boundary incorporated by reference under (a) above shall continue to be operative, except as provided under (e) below.

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(e) The Department may determine under (b) above to reject the State Planning Commission formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary and to establish a revised Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary by promulgating an amendment to this chapter in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Until the Department promulgates such revised boundary, the Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary under (a) above shall continue to be operative.

(f) The CAFRA Planning Map, with all Coastal Planning Area, CAFRA center, CAFRA core, and CAFRA node boundaries operative under this section for purposes of N.J.A.C. 7:7E-5 and this subchapter, is available on the Department's Geographic Information System (GIS) and may be reviewed at the Department, 401 East State Street, Trenton, New Jersey 08625, (609) 292-1143.

(g) The boundaries delineated by the Department for coastal centers, as defined at N.J.A.C. 7:7E-5.2, are described in Appendices 2 and 3 of this chapter. The boundaries of the coastal centers in Appendix 2 shall expire on February 7, 2005. On and after February 7, 2005, the impervious cover limits and vegetative cover percentages for all sites in the CAFRA area, except for sites in the coastal centers in Appendix 3, shall be determined in accordance with N.J.A.C. 7:7E-5B.4(c), (e) or (f).

(h) For purposes of this section, a State Planning Commission formally approved new or changed boundary is one that the State Planning Commission has amended in accordance with the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., and the State Planning rules, N.J.A.C. 17:32.

(i) A site in the CAFRA area may include land in more than one coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node. Where this occurs, the impervious cover limits and vegetative cover percentages appropriate to the respective coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node portions of the site apply.

(j) Neither formal approval by the State Planning Commission of a new or changed boundary for a Planning Area, a new or changed community development boundary, or a new or changed core or node boundary, nor the incorporation by reference and acceptance or revision by the Department of such boundary as the Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary under this section shall exempt any development from this subchapter or from any of the requirements in this chapter.

#### **7:7E-5B.4 Impervious cover limits for a site in the CAFRA area**

(a) The impervious cover limit for a site in the CAFRA Area shall be determined as follows:

1. If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the impervious cover limit is determined under (c) below. Note that the impervious cover

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limit for such a site is calculated based on the acreage of the total land area on the site, as opposed to the acreage of the net land area on the site;

2. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node but is located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is determined under (d) below;

3. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is determined under (e) below; and

4. If a site is located on a military installation, the impervious cover limit is determined under (f) below.

(b) To determine the location of a site for the purposes of determining the applicable impervious cover limit:

1. Determine if the site is located in a CAFRA center, CAFRA core, or CAFRA node by referring to the CAFRA Planning Map;

2. If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, determine if the site is located in a coastal center by referring to Appendix 2 and 3;

3. If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in a coastal center, determine the Coastal Planning Area in which the site is located by referring to the CAFRA Planning Map; and

4. If the site is located on a military installation, see (f) below.

(c) If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the impervious cover limit is the limit at (c)1, 2 or 3 below, whichever is higher:

1. The acreage of the total land area on the site as determined under N.J.A.C. 7:7E-5.3(d)1, multiplied by the impervious cover percentage in Table H below for the type of CAFRA center, CAFRA core, or CAFRA node in which the site is located;

2. For a site located in the Coastal Metropolitan Planning Area, the acreage of the net land area on the site as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table H below for the Coastal Metropolitan Planning Area; or

3. The amount of legal, existing impervious cover located on the site, as determined under (g) below.

(d) If a site is located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is the limit at (d)1 or 2 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table H below for the type of coastal center in which the site is located; or

2. The amount of legal, existing impervious cover located on the site, as determined under (g) below.

(e) If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, is not located in the Coastal Metropolitan Planning Area, and is not located in a coastal center, the impervious cover limit is the limit at (e)1, 2, or 3 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7E-

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5.3(d), multiplied by the impervious cover percentage in Table H below for the Coastal Planning Area in which the site is located; or

2. The acreage covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department, excluding any buildings, asphalt and/or concrete paving placed on a site in accordance with (e)3 below; or

3. For a marina support facility at a legally existing and operating commercial marina including a marina operated by a public agency, commission or authority, the limit at (e)1 or 2 above or the amount of legal existing impervious cover located on the site, as determined under (g) below, provided the marina support facility is placed on existing legal impervious cover, whichever is higher. For the purposes of this subsection, marina support facilities are boat rack systems, facilities for sewage treatment and marina support buildings. Marina support buildings, include but are not limited to, showrooms, sheds, restrooms, and buildings for marine supplies, bait and tackle, boat sales, dock masters office(s), and boat repair, maintenance and manufacturing.

(f) If a site is located on a military installation, the impervious cover limit is the limit at (f)1 or 2 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table H below for a military installation; or

2. The amount of legal, existing impervious cover located on the site, as determined under (g) below.

(g) For the purposes of determining impervious cover limits under (c)3, (d)2, (e)3, and (f)2 above, the amount of existing impervious cover is the highest of the following, provided the impervious cover was legally placed on the site:

1. The amount of impervious cover located on the site at the time the application is submitted to the Department;

2. The amount of impervious cover that appears on the applicable 95-97 imagery; or

3. The amount of impervious cover that was placed under the authority of a coastal permit and after the date the photography was performed for the imagery in (g)2 above.

**TABLE H**  
**Percentages For Calculating Impervious Cover**  
**Limits Under N.J.A.C. 7:7E-5B.4**

<b>Site Location</b>	<b>Impervious Cover Percentage</b>
CAFRA Urban Center	90 percent
CAFRA region center Coastal regional center CAFRA core CAFRA node	80 percent
CAFRA town Coastal town	70 percent



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Military installation	
CAFRA village Coastal Village	60 percent
CAFRA hamlet Coastal hamlet	50 percent
Coastal Metropolitan Planning Area	80 percent
Coastal Suburban Planning Area, within a sewer service area*	30 percent
Coastal Suburban Planning Area, outside a sewer service area*	5 percent
Coastal Fringe Planning Area	5 percent
Coastal Rural Planning Area	3 percent
Coastal Environmentally Sensitive Planning Area	3 percent

\* "Sewer service area," for the purpose of this section, means the "sewer service area" as described at N.J.A.C. 7:15-5.16(a) and 5.18(c)4 and (c)5, and identified in a wastewater management plan in accordance with the Water quality Management Planning rules at N.J.A.C. 7:15-5 and/or in an areawide water quality management plan in accordance with N.J.A.C. 7:15-3. Wastewater management plans and areawide water quality management plans may be reviewed at the Department's Division of Watershed Management, 401 East State Street, Trenton, New Jersey; 609-984-0058.

#### **7:7E-5B.5 Vegetative cover percentages for a site in the CAFRA area**

(a) The area (in acres) on a site in the CAFRA area in which trees and/or herb/shrub vegetation shall be planted or preserved is calculated as follows:

1. To determine the area (in acres) of tree preservation and/or tree planting on the site:
  - i. Determine the location of the site for purposes of determining applicable vegetative cover percentages using the method described at N.J.A.C. 7:7E-5B.5(b);
  - ii. Identify the forested or unforested portions of the site, as determined under N.J.A.C. 7:7E-5.5; and
  - iii. For each forested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the forested site or forested portion as determined under N.J.A.C. 7:7E-5.3(d), by the tree preservation percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and
  - iv. For each unforested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d), by the tree planting percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and
2. To determine the area (in acres) of herb/shrub vegetation preservation or planting on the site, subtract both the acreage of the impervious cover allowed under N.J.A.C. 7:7E-5B.4 and the acreage of tree planting and/or preservation required under (a)1 above from the acreage of the net land area on the site.

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(b) If the sum of the acreage of tree planting required under (a)1 above plus the acreage of either the existing impervious cover on the site as determined under N.J.A.C. 7:7E-5B.4(c), (d), (e)3 or (f) or the acreage covered by buildings and/or asphalt or concrete pavement as determined under N.J.A.C. 7:7E-5B.4(e)2, exceeds the net land area on the site, as determined under N.J.A.C. 7:7E-5.3(d), then trees shall be planted in area (in acres) remaining after the acreage of impervious cover or acreage covered by buildings and/or asphalt or concrete pavement is subtracted from the acreage of the net land area on the site.

(c) The preservation or planting of trees and/or herb/shrub vegetation areas shall comply with the vegetative cover requirements at N.J.A.C. 7:7E-5.4.

1. The requirement for tree planting at (a)1 above, can be satisfied by preserving equivalent forested areas in addition to that required under (a)1 above.

2. The requirement for planting of herb/shrub vegetation at (a)2 above, can be satisfied by preserving equivalent wooded areas or planting an equivalent area of trees in addition to that required under (a)1 above.

**TABLE I**  
**Tree Preservation and Planting Percentages**  
**For Forested and Unforested Sites**

Site Location	Tree preservation percentage for forested portion of site	Tree preservation and/or planting percentage for Unforested portion of site
CAFRA urban center CAFRA regional center Coastal regional center CAFRA core CAFRA node Military installation	10 percent	0 percent
CAFRA town Coastal town	25 percent	5 percent
CAFRA village Coastal village	30 percent	5 percent
CAFRA hamlet Coastal hamlet	40 percent	5 percent
Coastal Metropolitan Planning Area	10 percent	0 percent
Coastal Suburban Planning Area, within a sewer service area*	35 percent	5 percent
Coastal Suburban Planning Area, outside a sewer service area* Coastal Fringe Planning Area Coastal Rural Planning Area	70 percent	5 percent

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Coastal Sensitive Planning Area	Environmentally		
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\*"Sewer service area, "for the purpose of this section, means the "sewer service area" as described at N.J.A.C. 7:15-5.16(a) and 5.18(c)4 and 5, and identified in a wastewater management plan in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15-5 and/or in an areawide water quality management plan in accordance with N.J.A.C. 7:15-3. Wastewater management plans and areawide water quality management plans may be reviewed at the Department's Division of Watershed Management, 401 East State Street, Trenton, New Jersey; 609-984-0058.

## **SUBCHAPTER 6. GENERAL LOCATION RULES**

### **7:7E-6.1 Rule on location of linear development**

(a) A linear development as defined at N.J.A.C. 7:7E-1.8, shall comply with the specific location rules to determine the most acceptable route, to the maximum extent practicable. If part of the proposed alignment of a linear development is found to be unacceptable under the specific location rules, that alignment (perhaps not the least possible distance) may nonetheless be acceptable, provided the following conditions are met:

1. There is no prudent or feasible alternative alignment which would have less impact on sensitive areas and marine fish or fisheries as defined at N.J.A.C. 7:7E-8.2;
2. There will be no permanent or long-term loss of unique or irreplaceable areas;
3. Appropriate measures will be used to mitigate adverse environmental impacts to the maximum extent feasible, such as restoration of disturbed vegetation, habitats, and land and water features; and
4. The alignment is located on or in existing transportation corridors and alignments, to the maximum extent practicable.

### **7:7E-6.2 Basic location rule**

(a) A location may be acceptable for development under N.J.A.C. 7:7E-3, 4, 5, 5A, 5B, and 6, but the Department may reject or conditionally approve the proposed development of the location as reasonably necessary to:

1. Promote the public health, safety, and welfare;
2. Protect public and private property, wildlife and marine fisheries; and
3. Preserve, protect and enhance the natural environment.

### **7:7E-6.3 Secondary impacts**

(a) Secondary impacts are the effects of additional development likely to be constructed as a result of the approval of a particular proposal. Secondary impacts can also include traffic increases, increased recreational demand and any other offsite impacts generated by onsite activities which affect the site and surrounding region.

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(b) Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy the Coastal Zone Management rules. The Department may restrict coastal development from connecting to an approved infrastructure in order to prevent adverse impacts to special areas and to protect and preserve coastal resources.

1. The level of detail and areas of emphasis of the secondary impact analysis are expected to vary depending upon the type of development. Minor projects may not even require such an analysis. Transportation and wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a rigorous secondary impact analysis.

2. Secondary impact analysis must include an analysis of the likely geographic extent of induced development, its relationship to the State Development and Redevelopment Plan, an assessment of likely induced point and non-point air and water quality impacts, and evaluation of the induced development in terms of all applicable Coastal Zone Management rules.

3. Models for secondary impact analysis may be found in New Jersey Department of Community Affairs, Division of State and Regional Planning, Secondary Impacts of Regional Sewerage Systems (1975), and in USEPA, Manual for Evaluating Secondary Impacts of Wastewater Treatment Facilities (EPA-600/5-78-003, 1978).

(c) See note at the beginning of this Chapter.

## **SUBCHAPTER 7. USE RULES**

### **7:7E-7.1 Purpose**

Many types of development seek to locate in the coastal zone. The second stage in the screening process of the Coastal Zone Management rules involves analysis of appropriate uses of coastal resources. Use rules are rules and conditions applicable to particular kinds of development. Use rules do not preempt location rules which restrict development, unless specifically stated. In general, conditions contained in the use rules must be satisfied in addition to the location rules (N.J.A.C. 7:7E-2 through 6), and the resource rules described in the following subchapter (N.J.A.C. 7:7E-8).

### **7:7E-7.2 Housing use rules**

(a) "Housing" includes single family detached houses, multi-family units with apartments or town houses, high-rise buildings and mixed use developments.

(b) Standards relevant to water area and water's edge housing are as follows:

1. New housing or expansion of existing habitable housing is prohibited in Water Areas. Reconstruction of existing habitable structures on pilings located over water areas is conditionally acceptable except when damaged by wind, water or waves, in which case reconstruction is prohibited.

2. In special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, new housing is also acceptable on structurally sound

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existing pilings, or where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in the same or another location.

i. Structurally sound existing pilings may be reconfigured provided that the total area of water coverage is not increased and fisheries resources are not adversely impacted.

ii. Expansion of the total area of water coverage is discouraged, except where it can be shown that extensions are functionally necessary for water dependent uses.

iii. New housing acceptable under this rule shall be consistent with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11), including provisions of fishing access as appropriate.

3. Housing is conditionally acceptable in the filled water's edge, provided that it meets the requirements of the Filled Water's Edge rule (N.J.A.C. 7:7E-3.23) and the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11). The residential development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B, except on bay islands where the requirements of the Bay Island Corridor rule (N.J.A.C. 7:7E-3.21) shall apply.

4. New housing involving the stabilization of existing lagoons through revegetation, bulkheading or other means is conditionally acceptable provided that the conditions of the Existing Lagoon Edge rule (N.J.A.C. 7:7E-3.24) and the Filling rule (N.J.A.C. 7:7E-4.10) are satisfied.

5. On sites with existing shore protection structures, the residential structure shall be set back a minimum of 25 feet from the oceanfront shore protection structures, and a minimum of 15 feet from shore protection structures elsewhere. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the seaward side of the revetment.

6. Water area and water's edge housing shall include a provision for boat ramps wherever feasible unless an accessible boat ramp is nearby.

7. Rationale: See the note at the beginning of this Chapter.

(c) Standards relevant to floating homes are as follows:

1. A floating home is any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.

2. Floating homes are prohibited in the coastal zone. Those floating homes registered with the New Jersey Department of Motor Vehicles prior to June 1, 1984 are not subject to this paragraph.

3. Rationale: See the note at the beginning of this Chapter.

(d) Standards relevant to cluster development are as follows:

1. Housing developments are encouraged to cluster dwelling units on the areas of sites most suitable for development. "Clustering" is defined as an increase of net density realized by reducing the size of private lots and retaining or increasing the gross density of a project.

2. Rationale: See the note at the beginning of this Chapter.

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(e) Standards relevant to the development of a single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8, and provided the single family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. Development shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland buffers, and 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats;

2. Development shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (e)2i or ii below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (e)2i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purposes of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; or

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the Dunes rule at N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal flood insurance rate map;

(2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

(3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;

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(4) The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;

(5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; and

(6) The proposed development does not include the construction of a shore protection structure;

3. Development shall comply with N.J.A.C. 7:7E-3.31, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7E-3.31(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (e)10i below, unless the development meets either (e)3i or ii below:

i. The development is located in the “developed bluff area.” For the purposes of this paragraph, a “developed bluff area” is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)3i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

4. Development shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, except as excluded under (i) below;

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the Coastal High Hazard Areas rule, N.J.A.C. 7:7E-3.18, or Erosion Hazard Areas rule at N.J.A.C. 7:7E-3.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

5. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

6. Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

7. For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations;

8. The development shall comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1;

9. For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

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10. Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

ii. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction in a form approved by the Department is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (e)10i above;

11. The standards for the expansion or reconstruction (with or without expansion) of a single family home or duplex are found at N.J.A.C. 7:7E-7.2(f);

12. Rationale: See the note at the beginning of this Chapter.

(f) Standards relevant to the expansion, or reconstruction (with or without expansion) of a legally constructed habitable single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8, and provided the single family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. Development shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland buffers, and 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats;

2. Development shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (f)2i through iv below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (f)2i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:



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(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures;

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule at N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal flood insurance rate map;

(2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding

(3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;

(4) The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;

(5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures; and

(6) The proposed development does not include the construction of a shore protection structure.

iii. Development that is located on a dune need not comply with the Dunes rule, N.J.A.C. 7:7E-3.16, if the development meets the following criteria:

(1) The single family home or duplex legally existed on July 19, 1993;

(2) The development constructed after July 19, 1993 does not exceed a cumulative surface area of 750 square feet on the dune, excluding the area of reconstruction within the existing footprint of development and the area of development authorized under (f)iv below above;

(3) The development is located within the footprint of development of the existing single family home or duplex and/or on the landward side of the existing footprint of

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development and within the area between lines extended landward and perpendicular to the mean high water line from the widest shore parallel points of the existing footprint of development, except as provided at (f)2iii(4) below;

(4) For every 10 feet the footprint of development of the single family home or duplex is set back landward on the lot from the existing footprint of development of the single family home or duplex, the total area of development may be increased by 200 square feet in addition to that authorized in (f)2iii(2), provided the additional square footage is constructed on the non-waterward side of the single family home or duplex;

(5) The dune area waterward of the single family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest dune crest elevation at the site; and

(B) Native dune vegetation shall be planted as necessary to establish vegetative cover in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060; and

(6) A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18.

iv. Development that is located on a dune and entails the enclosure of an existing deck, patio, or porch, need not comply with the Dunes rule, N.J.A.C. 7:7E-3.16, if the development meets the following criteria:

(1) The development is the enclosure of a deck, patio, or porch;

(2) The deck, patio, or porch enclosure is located on the non-waterward side of the single family home or duplex, as defined at N.J.A.C. 7:7-1.3;

(3) The deck, patio, or porch legally existed on July 19, 1993;

(4) The deck, patio, or porch abuts the dwelling;

(5) The enclosure does not extend beyond the limit of the existing deck, patio, or porch as it existed on July 19, 1993;

(6) The footprint of development of the deck, patio, or porch enclosure does not exceed 400 square feet;

(7) The dune area waterward of the single family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest existing dune crest elevation at the site; and

(B) Native dune vegetation shall be planted in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060; and

(8) A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18.

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3. Development shall comply with N.J.A.C. 7:7E-3.31, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7E-3.31(a) If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (f)10i below, unless the development meets either (f)3i or ii below:

i. The development is located in the “developed bluff area.” For the purposes of this paragraph, a “developed bluff area” is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (f)3i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

4. Development shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, except as excluded under (i) below.

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the Coastal High Hazard Areas rule, N.J.A.C. 7:7E-3.18, or Erosion Hazard Areas rule at N.J.A.C. 7:7E-3.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

5. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

6. Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

7. For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations;

8. The development shall comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1;

9. For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

10. Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

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ii. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction in a form approved by the Department is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (f)10i above;

11. The standards for the development of a single family home or duplex are found at N.J.A.C. 7:7E-7.2(e);

12. Rationale: See the note at the beginning of this Chapter.

(g) The standards relevant to housing and transportation are as follows:

1. The development of housing at locations and densities that contribute to the feasibility of public transportation is encouraged.

2. Residential developments are encouraged to include bicycle paths to activity centers and bicycle storage facilities.

3. Residential developments are encouraged to provide pedestrian amenities which include lighted walkways with benches, lighted sidewalks with curb ramps and intersections, shade trees, and pedestrian controlled traffic lights.

4. Rationale: See the note at the beginning of this Chapter.

### **7:7E-7.3 Resort/Recreational Use**

(a) Resort/recreation uses include the wide range of small and large developments attracted to and often dependent upon locations along the coast. These uses include hotels, motels, marinas, boating facilities, campgrounds, amusement piers, parks and recreational structures such as bathhouses, natural areas, open space for active and passive recreation, and linear paths for bicycling and jogging (see N.J.A.C. 7:7E-7.10 and N.J.A.C. 7:7E-5.5(d)).

(b) Standards relevant to recreation priority are as follows:

1. Each waterfront municipality should contain at least one waterfront park on each body of water within the municipality. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection Bond Funding.

2. Resort/recreation uses and commercial fisheries uses shall have priority over all other uses in Monmouth, Ocean, Atlantic, and Cape May counties with highest priority

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reserved for those uses that serve a greater rather than a lesser number of people, and those uses that provide facilities for people of all ages and for people with physical handicaps.

3. Rationale: See the note at the beginning of this Chapter.

(c) Standards relevant to recreation areas within developments are as follows:

1. "Recreation areas" include a variety of types and sizes of open space adequate to accommodate appropriate recreational activities or facilities.

2. Appropriate recreation areas shall be incorporated in the design of all residential, industrial and commercial development to the maximum extent practicable, as necessary to ensure that needed on-site recreation opportunities will not be precluded by a lack of suitable open space. The "maximum extent practicable" will be determined based on guidelines of the Green Acres Program (N.J.S.A. 13:8A-1 et seq.) which consider the recreation resource supply and demand, the natural characteristics of the site, and the ability to identify a public agency or other organization willing to manage, maintain and develop the open space as a recreational resource. What is necessary will be determined by consideration of recreation resource supply and demand and municipal and county open space and recreation master plans.

3. Rationale: See the note at the beginning of this Chapter.

(d) Standards relevant to marinas are as follows:

1. Marina means any dock, pier, bulkhead, mooring or similar structure or a collection of adjacent structures under singular or related ownership providing permanent or semi-permanent dockage to five or more vessels.

2. New marinas or expansion or renovation (including, but not limited to, dredging, bulkhead construction and reconstruction, and relocation of docks) of existing marinas for recreational boating are conditionally acceptable if:

i. The marina includes the development of an appropriate mix of dry storage areas, public launching facilities, berthing spaces, repair and maintenance facilities, and boating and hardware supply facilities, depending upon site conditions.

ii. The marina posts prominent signs indicating discharges shall not be allowed within the basin and provides restrooms and marine septic disposal facilities for wastewater disposal from boats. For marinas with dockage for 25 or more vessels or any on vessel with live-aboard arrangement, adequate and conveniently located pumpout stations shall be provided.

iii. Restrooms and at least one portable toilet emptying receptacle shall be provided at a marina. The portable toilet emptying receptacle requirement may be satisfied either by the installation of a receptacle device or by the designation of either a pumpout or restroom facility for this use; and

(1) Discharge to a municipal or regional treatment plant where practicable;

(2) Discharge to a subsurface sewerage disposal system constructed in accordance with N.J.A.C. 7:9-2 and N.J.A.C. 7:7E- 8.21; or

(3) Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal; and

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iv. New marina facilities and expansions and renovation of existing marinas shall provide public access in accordance with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11).

3. New marinas or boat launching facilities that provide primarily for sail, oar or rental boating are encouraged.

4. Expansions of existing marinas shall be encouraged by limiting non-water dependent land uses that preclude support facilities for boating.

5. Publicly funded marinas shall be designed to be part of multiple use parks, to the maximum extent practicable.

6. Recreational boating facilities are acceptable provided that they are designed and located in order to cause minimum feasible interference with the commercial boating industry.

7. New marinas are encouraged to locate on filled water's edge sites, where minimal dredging is required.

8. Construction of new marinas within areas designated by the Department as shellfish habitat is prohibited. Expansions of existing marinas within shellfish habitat areas shall comply with the standards of the Shellfish Habitat rule (N.J.A.C. 7:7E-3.2) and Submerged Vegetation rule (N.J.A.C. 7:7E-3.6).

9. Marinas shall comply with the design standards set forth in N.J.A.C. 7:7E-7.3A to the maximum extent practicable.

10. In addition to complying with all other applicable portions of these rules, all new, expanded and renovated boat mooring facilities with five or more slips which are located on any portion of the Navesink River, Shrewsbury River or Manasquan River (upstream of the Route 35 Bridge) or the St. George's Thorofare shall meet the conditions in (d)10i through iii below. Renovation shall include complete or partial alteration of any portion of a structure, including construction, reconstruction of or relocation of existing docks, piers, moorings and bulkheads and dredging. The conditions are:

i. A pumpout facility shall be constructed and maintained at those facilities at which boats over 24 feet in length or those with on-board septic facilities (heads) shall be docked. All other facilities shall construct and maintain on site marine septic disposal facilities;

ii. No pressure treated lumber or other lumber treated with any other substance shall be used in any portion of the project. This restriction applies only to bulkhead sheathing and planking, and dock planking, and does not apply to pilings. In addition, this restriction does not apply to any construction upland of the mean high water line; and

iii. The applicant and/or property owner shall finance monthly sampling and testing of fecal coliform levels per milliliter of water at five locations selected by the Department in the water in which the project is located. Testing shall be performed by a State-certified laboratory and shall be conducted beginning in the first month following the mooring of vessels and monthly thereafter for two full seasons of operation (that is, May 1 through October 31). The monitoring shall occur on the day of the month selected by the Department and no advance notice of the sampling day shall be given to the property-owner. Results of the monitoring shall be provided to the Department and the property-owner in writing by the laboratory within 10 calendar days after the date of sampling.

(1) The State-certified laboratory shall determine the pre-construction median level of fecal coliform in the water at each of the Department selected test sites at the applicant's

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expense, and advise the Department and the applicant in writing of these results within 10 calendar days after the date of sampling. If any post-construction test at any single site yields fecal coliform levels which exceed the pre-construction reading at that site by 100 percent, the property owner shall allow Department personnel access to the property during day-light hours to assess whether the operation of the project is causing or contributing to the elevated reading.

(2) In the event the Department determines in writing that the elevated readings of fecal coliform are caused, in whole or in part, by the operation of the project, the property owner shall, as a condition of the permit, cease such uses and practices as described in writing by the Department and shall implement such practices as determined by the Department in writing to be minimally necessary to reduce the levels of fecal coliform emanating from the project.

(3) In the event the Department determines that the laboratory has twice or more failed to sample in the correct location, failed to comply with commonly accepted sampling techniques and laboratory methods or has divulged the date of sampling to the applicant and/or property-owner in advance of sampling, the property owner shall immediately discontinue use of such laboratory upon receipt of written notice to this effect from the Department and shall arrange for all future sampling to be conducted by another State-certified laboratory. For every month in which sampling does not occur as a result of a change in laboratory, an extra month of sampling shall be required from the property owner during the next season of operation.

(4) If the property owner fails to arrange for water sampling as required herein without first securing the express written permission of the Department to omit sampling for that month, the property owner shall be in violation of the terms of the permit issued under these rules and the Department shall notify the property owner in writing of its intention to revoke the permit and prohibit use of the project pending final revocation of the permit in accordance with N.J.A.C. 7:7-4.11(b).

11. Rationale: See the note at the beginning of this Chapter.

(e) Standards relevant to amusement piers, parks and boardwalks are as follows:

1. For the purposes of this subsection, "amusement pier" means an elevated, pile-supported structure located on a beach and/or tidal water, seaward of a bulkhead or boardwalk, and perpendicular to the mean high water line, on which amusements are located. For purposes of this definition, "amusements" includes rides, games of skill or chance for prizes other than cash payoffs, vendors of toys and/or other merchandise. "Amusements" do not include games for cash payoffs, or bars or restaurants;

2. New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water, and the on-site improvement or repair of existing amusement piers, parks and boardwalk areas are discouraged unless the proposed development meets the following conditions:

i. The amusement pier, park, or boardwalk does not reasonably conflict with aesthetic values, ocean views, or other beach uses and wildlife functions;

ii. The proposed pier expansion will not eliminate or affect the existing direct public access to the beach, unless another access point is provided immediately adjacent to the expanded pier, for each access point eliminated;

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- iii. The surrounding community can adequately handle the activity and uses to be generated by the proposed development;
  - iv. The pier expansion is constructed on pilings at the same elevation as the existing pier; and
  - v. The pier expansion includes a provision for public seating and viewing at the terminal end of the expansion.
3. The expansion of a pier qualifying for a General Permit under N.J.A.C. 7:7-7 is acceptable.
4. Rationale: See the note at the beginning of this Chapter.

### **7:7E-7.3A Marina Development**

- (a) The following pertains to marina project design:
- 1. The following should be followed to promote water quality in the marina basin:
    - i. Basin depths must never exceed the depths of access channels nor the open water to which the basin is connected.
    - ii. Deep-draft slips shall be constructed in naturally deep portions of the site in order to minimize the need for dredging.
    - iii. Floating breakwaters are preferred in low-energy areas (where wavelengths are less than twice the width of the breakwater).
    - iv. Sharp angles are to be avoided; corners should be gently rounded, never square.
    - v. Basin depths should uniformly deepen toward the exit and waterway outside the basin.
    - vi. Entrance channels should not be located on corners.
    - vii. Where possible, entrance channels should be oriented in the direction of the prevailing winds to promote wind-driven circulation.
    - viii. Enclosed basins should include openings at opposite ends to promote circulation.
    - ix. Slips should be oriented parallel to currents, never broadside; this promotes circulation and reduces the load on the pier structure.
    - x. Fuel pumps shall include back pressure cut-off valves. Main cut-off valves shall be available both at the dock and in the upland area of the marina.
    - xi. Fuel docks should be sturdy using a floating design wherever possible in order to withstand significant storm affected tidal ranges.
    - xii. To control stormwater runoff, upland portions of the site should include water quality features such as detention basins and limit pollutants from entering the waterway.
  - 2. Sloping rip-rap bulkheads are preferred over solid vertical structures; they better dissipate wave energy and provide a more diverse habitat for marine organisms.
  - 3. To avoid standing waves, bulkheads should never be parallel to one another.
  - 4. To minimize the impact on the photic zone, dock and pier widths should be minimized. In addition, the structures should stand as high above mean high water as possible and should be oriented north-south to the maximum extent practicable.
  - 5. The distance from a parked car to a slip should never exceed 180 meters.
  - 6. Septic systems shall be installed with a minimum setback of 100 feet and in soils with a minimum depth to the seasonal high water table of four feet or more.
  - 7. For safety, the usable width of the entrance channel should be at least four times the beam of the widest expected vessel, or a minimum of 19 meters.



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8. The marina shall provide pumpout station(s) (fixed or portable). Marinas which allow occupation of berthed vessels for a period of 72 hours or more shall provide slipside pumpout facilities.

9. The marina shall provide abundant trash receptacles along with adequate fish cleaning areas, including separate and well-marked dispensers for organic refuse.

10. Ample parking facilities shall be provided, with a minimum of 0.6 spaces per slip (the number will range from 0.6 to 2.5 spaces per slip, depending on the nature of the marina).

11. The design should include an aesthetically pleasing landscape design.

12. Maintenance areas shall be screened by proper landscaping and shall include techniques which will prevent materials from entering the water.

13. The fueling facility shall be designed to accommodate four of the largest expected vessels.

14. For safety, the turning area of the basin should be at least 2.25 times the length of the longest expected vessel.

15. Marinas shall provide restroom facilities according to the following schedule:

i. For a small marina (up to 40 boats):

(1) Men: One toilet stall, one urinal, and one washbasin.

(2) Women: Two toilet stalls and one washbasin.

ii. For a small "quality" or medium marina (40 to 80 boats):

(1) Men: One urinal, one toilet stall, one shower stall, and one washbasin.

(2) Women: Two toilet stalls, one washbasin, and one shower stall.

iii. For a large marina (over 80 boats):

(1) Add:

(A) One urinal per 30 boats (men);

(B) One toilet stall per 60 boats (men);

(C) One toilet stall per 30 boats (women);

(D) One washbasin per 30 boats (men and women);

(E) One shower stall per 60 boats (men and women).

16. For safety, comfort, and to avoid interference with commercial boating activity, marinas will be designed such that wave heights do not exceed two to four feet in the entrance channel and one to 1.5 feet in the berthing area. Such a design will assume four foot external wave conditions.

17. The marina shall develop and implement a recycling plan for solid waste as appropriate to county requirements.

(b) The following pertains to marina construction:

1. Only high-grade, slow leaching wood preservatives shall be used on pilings and other dock/pier woods.

2. If dredging is necessary, it shall be scheduled around critical life stages of marine organisms.

3. Dredging shall take place during the colder months when the dissolved oxygen levels are naturally high.

4. Erosion and sediment controls shall be in place prior to construction.

5. Where appropriate (currents under 1.5 knots), sediment curtains shall be used during dredging.

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6. Clean dredge spoil with adequate grain size shall be used for beach nourishment.

(c) The following pertains to marina operation:

1. The marina must have available adequate floating containment booms and absorbant materials in the event of hydrocarbon spills. Employees shall be trained in the deployment and proper usage of such equipment.

2. Operators shall immediately notify the Department and the Coast Guard of all significant hydrocarbon spills.

3. Operators shall take immediate action in the event of a spill, including boom deployment and spreading of absorbent materials.

4. Waste receptacles shall be emptied daily.

5. Boat maintenance shall be undertaken as far from the water as possible.

6. Clean dredged material with adequate grain size shall be used for beach nourishment.

7. No-discharge signs shall be posted through-out the marina basin.

#### **7:7E-7.4 Energy facility use rule**

(a) Energy facilities include facilities, plants or operations for the production, conversion, exploration, development, distribution, extraction, processing, or storage of energy or fossil fuels. Energy facilities also include onshore support bases and marine terminals. Energy facilities do not include operations conducted by a retail dealer, such as a gas station, which is considered a commercial development.

(b) Standards relevant to siting of new energy facilities, including all associated development activities, are as follows:

1. Energy facilities shall not be sited in Special Areas as defined at N.J.A.C. 7:7E-3.1 through 3.42, 3.44, 3.46, and marine fish and fisheries areas defined at N.J.A.C. 7:7E-8.2, unless site-specific information demonstrates that such facilities will not result in adverse impacts to these areas;

2. Except for water dependent energy facilities, energy facilities shall be sited at least 500 feet inland of the mean high water line of tidal waters in the following areas:

i. The CAFRA area; and

ii. The Western Ocean, Southern, Mullica-Southern Ocean, Great Egg Harbor River and Delaware Estuary regions, as defined at N.J.A.C. 7:7E-5A.2(d);

3. Public access to and use of the waterfront and tidal waters shall be maintained and, where feasible, enhanced in the siting of energy facilities, pursuant to N.J.A.C. 7:7E-8.11; and

4. The scenic and visual qualities of coastal areas shall be maintained as important public resources in the siting of energy facilities, pursuant to N.J.A.C. 7:7E-8.12.

(c) Coastal energy facilities construction and operation shall not directly or indirectly result in net loss of employment in the State for any single year.

1. Coastal energy facility construction and operation which results in loss of 200 or more person-years of employment in jobs in New Jersey directly or indirectly related to the State's coastal tourism industry in any single year is prohibited.

2. Rationale: See the note at the beginning of this Chapter.

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(d) Standards relevant to Outer Continental Shelf (OCS) oil and gas exploration and development are as follows:

1. Exploration of the Mid-Atlantic, North Atlantic, and other offshore areas with potential reserves of oil and natural gas is discouraged, as long as there are other viable alternatives with less or no environmental threats to the coastal environment, including energy conservation, which have not been fully explored. Should exploration occur and commercially recoverable amounts of oil or natural gas be found, development and production of offshore hydrocarbons shall be carried out according to the specific energy facility policies of this section.

2. Rationale: See the note at the beginning of this Chapter.

(e) Standards relevant to onshore support bases are as follows:

1. New or expanded onshore support bases and marine terminals to support offshore oil and gas exploration, development, and production (including, but not limited to, facilities for work boats, crew boats and helicopters, pipelaying barges, pipeline jet barges, ocean-going tugs, anchor handling vessels, and limited, short-term storage facilities) are encouraged at locations in the Urban Area, Delaware River and Northern Waterfront regions and discouraged in the CAFRA area.

i. Preferable locations for water-dependent onshore support bases include urban waterfront areas, where onshore adverse physical, economic, and institutional impacts will be less than the impacts likely to be placed on less industrially developed areas which are more dependent upon tourism and the resort industry.

ii. Small facilities for storing oil spill containment and cleanup equipment for offshore operations, and emergency crew transport facilities, including crew boat operations, will, however, be acceptable along the Atlantic Ocean or Delaware Bay where such a location would facilitate and expedite offshore emergency operations.

2. Rationale: See the note at the beginning of this Chapter.

(f) Standards relevant to platform fabrication yards and module construction are as follows:

1. Platform fabrication yards and module construction are encouraged in the Urban Area, Delaware River and Northern Waterfront regions, which have the requisite acreage, adequate industrial infrastructure, ready access to the open sea, and adequate water depth, and where the operation of such a yard would not alter existing recreational uses of the ocean and waterways in the areas. They are discouraged elsewhere in the coastal zone.

2. Rationale: See the note at the beginning of this Chapter.

(g) Standards relevant to repair and maintenance facilities are as follows:

1. Repair and maintenance facilities for vessels and equipment for offshore activities are encouraged in the Urban Area, Delaware River and Northern Waterfront regions. Repairs can be accommodated on an emergency basis in existing ship repair facilities in the CAFRA area as defined at N.J.A.C. 7:7E-1.8, but not on a continual, long-term basis.

2. Rationale: See the note at the beginning of this Chapter.

(h) Standards relevant to pipe coating yards are as follows:

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1. Pipe coating yards are discouraged in the CAFRA area and encouraged in the Port of New York and New Jersey and the Port of Camden and Philadelphia.

2. Rationale: See the note at the beginning of this Chapter.

(i) Standards relevant to pipelines and associated facilities are as follows:

1. Crude oil and natural gas pipelines to bring hydrocarbons from offshore of the New Jersey coast to existing refineries, oil and gas transmission and distribution systems, and other new oil and natural gas pipelines are conditionally acceptable, provided:

i. For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by interested Federal, State and local agencies, affected industries, and the general public;

ii. The pipeline corridors for landing oil or natural gas are to be located in or adjacent to existing already developed or disturbed road, railroad, pipeline, electrical transmission or other rights-of-way, to the maximum extent practicable;

iii. Proposals to construct offshore oil and gas pipelines, originating on the Outer Continental Shelf, and all of the contemplated ancillary facilities along the pipeline route such as, for example, gas separation and dehydration facilities, gas processing plants, oil storage terminals, and oil refineries, will be evaluated in terms of the entire pipeline corridor through the State of New Jersey and its coastal waters;

iv. Pipeline corridors through the State coastal waters shall, to the maximum extent feasible, avoid offshore munitions, chemical and waste disposal areas, heavily used waterways, geological faults, wetlands and significant fish or shellfish habitats;

v. Pipelines shall be buried to a depth sufficient to minimize exposure by scouring, ship groundings, anchors, fishing and clamming and other potential obstacles on the sea floor. Trenching operations shall be conducted in accordance with applicable Federal regulations;

2. New major pumping stations and other ancillary facilities associated with offshore oil and gas pipelines, not specifically identified in this section, are discouraged in the CAFRA area and coastal waters;

3. Oil and gas pipeline related facilities shall provide adequate visual, sound, and vegetative buffers; and

4. Offshore platforms for pumping or compressor stations are encouraged to be located out of sight of the shoreline.

5. Rationale: See the note at the beginning of this Chapter.

(j) Standards relevant to gas separation and dehydration facilities are as follows:

1. For the purposes of this subsection, the following terms have the following meanings:

i. "Separation" means the removal of free liquids from a gas stream. Free liquids may be either hydrocarbon liquids (which may be processed into fuels such as ethane, butane (and propane) or free water.

ii. "Dehydration" means the removal of water vapor from the gas stream after separation of the liquid from the gas.

2. Separation and dehydration facilities are discouraged in the CAFRA area and coastal waters.

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3. Separation and dehydration facilities shall:

- i. Provide adequate visual, sound, and vegetative buffers; and
- ii. Be reviewed as part of the overall proposed gas transportation system.

4. Rationale: See the note at the beginning of this Chapter.

(k) Standards relevant to gas compressor stations are as follows:

1. "Compressor stations" are facilities located along natural gas pipelines which raise the pressure of the gas in order to transport the resource more efficiently and economically.

2. Compressor stations are encouraged to be located out of the sight of the shoreline on platforms in offshore waters. They are discouraged in the CAFRA area and coastal waters.

3. Rationale: See the note at the beginning of this Chapter.

(l) Standards relevant to gas pigging facility are as follows:

1. A "pig" is a scraping tool that is forced through a pipeline to clean out accumulations of wax, scale, gas liquids or any foreign materials from the inside walls of the pipe. The pig is inserted offshore and would be removed at an onshore location called a "pigging facility."

2. A pigging facility, which may or may not be associated with a separation and dehydration facility, is discouraged in the CAFRA area. The need for and location of the facility will be reviewed within the context of the entire natural gas pipeline system.

3. Rationale: See the note at the beginning of this Chapter.

(m) Standards relevant to gas processing plants are as follows:

1. A "gas processing plant" is designed to recover liquifiable hydrocarbons from a gas stream before it enters a commercial transmission line. A gas processing facility may include treatment, recovery and fractionation equipment to separate the recovered liquid hydrocarbon stream into its various components including, for example, ethane, butane and propane.

2. Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the CAFRA area and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system.

3. Rationale: See the note at the beginning of this Chapter.

(n) Standards relevant to other gas-related facilities are as follows:

1. Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the CAFRA area if adequate visual, sound, and vegetative buffer areas are provided.

2. Rationale: See the note at the beginning of this Chapter.

(o) Standards relevant to oil refineries and petrochemical facilities are as follows:

1. New oil refineries and petrochemical facilities are conditionally acceptable outside of the CAFRA area provided they are consistent with all applicable location and resource rules.

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2. New oil refineries and petrochemical facilities outside the CAFRA area are encouraged to locate in established industrial areas accessible to their potential labor force and existing infrastructure.

3. New oil refineries and petrochemical facilities are prohibited in the CAFRA area.

4. Expansion in capacity of existing oil refineries and petrochemical facilities at existing sites, which are all located outside of the CAFRA area, will be acceptable if such expansion does not violate applicable State air and water quality standards.

5. Rationale: See the note at the beginning of this Chapter.

(p) Standards relevant to storage of crude oil, gases and other potentially hazardous liquid substances are as follows:

1. The storage of crude oil, gases and other potentially hazardous liquid substances as defined in N.J.A.C. 7:1E-1.1 under the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.) is prohibited on barrier islands and discouraged elsewhere in the CAFRA area.

2. The storage of crude oil, gases and other potentially hazardous liquid substances is conditionally acceptable in the Urban Area, Northern Waterfront and Delaware River regions if it is compatible with or adequately buffered from surrounding uses.

3. The storage of crude oil, gases and other potentially hazardous liquid substances is not acceptable where it would limit or conflict with a potential recreational use.

4. The storage of crude oil, gases and other potentially hazardous liquid substances is not acceptable along the water's edge unless the storage facility is supplied by ship, in which case it is acceptable on the filled water's edge provided the storage facility complies with (p)1, 2 and 3 above.

5. Rationale: See the note at the beginning of this Chapter.

(q) Standards relevant to tanker terminals are as follows:

1. New or expanded tanker facilities are acceptable only in existing ports and harbors where the required channel depths exist to accommodate tankers.

i. Multi-company use of existing and new tanker terminals is encouraged in the Port of New York and New Jersey and the Port of Camden and Philadelphia, where adequate infrastructure exists to accommodate the secondary impacts which may be generated by such terminals, such as processing and storage facilities.

2. New tanker terminals are discouraged in areas not identified in (q)1 above.

3. Offshore tanker terminals and deepwater ports are discouraged.

4. Rationale: See the note at the beginning of this Chapter.

(r) Standards relevant to electric generating stations are as follows:

1. New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable provided:

i. The proposed location and site design of the electric generating facility is the alternative which has the least practicable impacts to the coastal zone, based on a comparative evaluation of alternative sites within the coastal zone and inland.

ii. Fossil fuel (coal, oil or gas) and hydroelectric generating stations are discouraged in scenic or natural areas that are important to recreation and open space purposes.

iii. Nuclear generating stations shall be located in generally remote, rural, and low

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density areas, consistent with the criteria of 10 CFR 100 (United States Nuclear Regulatory Commission rules on siting nuclear generating stations) and/or any other related Federal regulations. In addition, the nuclear generating facility shall be located in an area where the appropriate low population zone and population center distance are likely to be maintained around the nuclear generating facility, through techniques such as land use controls or buffer zones.

iv. The construction and operation of a nuclear generating station shall not be approved unless the proposed method for disposal of the spent fuel to be produced by the facility will be safe, conforms to standards established by the United States Nuclear Regulatory Commission, and will effectively remove danger to life and the environment from the radioactive waste material. This finding is required under present State law (N.J.S.A. 13:19-11) and will be made consistent with judicial decisions (see *Public Interest Research Group v. State of New Jersey*, 152 N.J. Super. 191 (App.Div., cert. den., 75 N.J. 538 (1977)) and Federal law.

v. The construction and operation of a nuclear generating station shall not be approved unless DEP finds that the proposed method for disposal of the spent fuel to be produced by the facility will be safe, conforms to standards established by the United States Nuclear Regulatory Commission, and will effectively remove danger to life and the environment from the radioactive waste material. This finding is required under present State law (N.J.S.A. 13:19-11) and will be made consistent with judicial decisions (see *Public Interest Research Group v. State of New Jersey*, 152 N.J. Super. 191 (App.Div. 1977)) and Federal law.

2. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest is conditionally acceptable provided it meets applicable State and Federal laws and standards.

3. Rationale: See the note at the beginning of this Chapter.

(s) Standards relevant to liquefied natural gas (LNG) facilities are as follows:

1. New marine terminals and associated facilities that receive, store, and vaporize liquefied natural gas for transmission by pipeline are discouraged in the coastal zone unless a clear and precise justification for such facilities exists in the national interest; the proposed facility is located and constructed so as to neither unduly endanger human life and property, nor otherwise impair the public health, safety and welfare, as required by N.J.S.A. 13:19-10f; and such facilities comply with the Coastal Zone Management rules.

i. LNG facilities shall be sited and operated in accordance with the standards set forth in the Natural Gas Act of 1938, 15 U.S.C. 717-717z, the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432, the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, October 24, 1992, and the National Environmental Policy Act, 42 U.S.C. 4321 et seq., which set forth standards for siting, design, installation, inspection, testing, construction, operation, transportation of gas, replacement, and maintenance of facilities.

ii. In determining the acceptability of proposed LNG facilities the Department will consider siting criteria including but not limited to:

- (1) The risks inherent in tankering LNG along New Jersey's waterways;
- (2) The risks inherent in transferring LNG onshore; and
- (3) The compatibility of the facility with surrounding land uses, population densities,

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and concentrations of commercial or industrial activity.

iii. New LNG facilities that liquefy, store and vaporize LNG to serve demand during peak periods shall be located in generally remote, rural, and low-density areas where land use controls and/or buffer zones are likely to be maintained.

2. Rationale: See the note at the beginning of this Chapter.

#### **7:7E-7.5 Transportation Use rule**

(a) Standards relevant to roads are as follows:

1. New road construction must be consistent with the rule on location of linear development at N.J.A.C. 7:7E-6.1, and shall be limited to situations where:

i. A clear need exists, taking into account the alternatives of upgrading existing roads and of using public transportation to meet the need;

ii. Provision is made to include construction of bicycle and foot paths, except where these would not be feasible;

iii. Provision is made to include, where appropriate, catwalks and parking access to nearby water bodies.

iv. Provision is made for coordinated construction of public transportation rights-of-way and facilities, such as bus lanes, rail lines, and related transit stop or station facilities and parking, except where such construction would not be feasible;

v. Visual and physical access to the coastal waters is maintained, to the maximum extent practicable; and

vi. Induced development in conflict with coastal rules would not be expected to result.

2. Rationale: See the note at the beginning of this Chapter.

(b) Standards relevant to public transportation are as follows:

1. New and improved public transportation facilities, including bus, rail, air, boat travel, people mover systems and related parking facilities, are encouraged.

2. Development of existing rights-of-way which would preclude either their use for public transportation or public recreation trails is discouraged.

3. Rationale: See the note at the beginning of this Chapter.

(c) Standards relevant to bicycle and foot paths are as follows:

1. The construction of internal bicycle paths, foot paths and sidewalks in residential, commercial, and industrial developments is required to the maximum extent practicable.

2. Linear bicycle and foot paths are encouraged along the edges of all water bodies, and from the water body to the nearest public road, provided they would not disturb Special Areas or subject the user to danger.

3. Existing bicycle and foot paths shall be continued around development when it is not practical to pass through development.

4. Rationale: See the note at the beginning of this Chapter.

(d) Standards relevant to parking facilities are as follows:

1. Parking facility standards apply to all of the following:

i. Any parking facility of which any part is within the area subject to the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.);



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ii. Any parking facility and related access, of which any part of the facility or related access is located in the coastal zone; or

2. Parking lots, garages and large paved areas are conditionally acceptable, provided that they will not interfere with existing or planned mass transit services, the extent of paved surfaces is minimized, and landscaping with indigenous species is maximized.

3. Rationale: See note at the beginning of the Chapter.

#### **7:7E-7.6 Public facility use rule**

(a) Public facilities include a broad range of public works for production, transfer, transmission, and recovery of water, sewerage and other utilities. The presence of an adequate infrastructure makes possible future development and responds to the needs created by present development.

(b) Solid waste facility means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste, but shall not include a recycling center, a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39, or an intermodal container facility authorized pursuant to N.J.A.C. 7:26-3.6.

1. Solid waste facilities are conditionally acceptable provided:

i. Solid waste conservation techniques such as recycling, resource and energy recovery, and volume reduction are explored and proved infeasible before a new or expanded sanitary landfill, preferably at a regional scale, is deemed acceptable;

ii. The solid waste facility is not located in a coastal wetland as provided at N.J.A.C. 7:7-2.2(b); and

iii. The solid waste facility complies with the Solid and hazardous waste rule at N.J.A.C. 7:7E-8.22.

2. Rationale: See the note at the beginning of this Chapter.

(c) Wastewater treatment facilities are conditionally acceptable provided:

1. The wastewater treatment facility, including sewer lines, is consistent with an approved Water Quality Management (208) Plan;

2. The secondary impacts associated with the facility are consistent with the Coastal Zone Management rules; and

3. The facility shall provide for multiple use of the site, including open space and recreation use, to the maximum extent feasible.

4. Rationale: See the note at the beginning of this Chapter.

(d) New or expanded public facilities other than those listed at (b) and (c) above are conditionally acceptable provided:

1. The public facility would serve a demonstrated need that cannot be met by an existing public facility at the site or region;

2. Alternate technologies, including conservation, are an impractical or infeasible approach to meeting all or part of the need for the public facility; and

3. The public facility would not generate significant secondary impacts inconsistent with the Coastal Zone Management rules.

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#### **7:7E-7.7 Industry Use rule**

(a) Industry uses are uses that involve industrial processing, manufacturing, storage or distribution activities. These uses include, but are not limited to, electric power production, food and food by-product processing, paper production, agri-chemical production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products. Industrial uses do not include petroleum refining which is considered an energy use and, therefore subject to the standards of N.J.A.C. 7:7E-7.4.

(b) Industrial uses are encouraged in special urban areas. Elsewhere, industrial uses are conditionally acceptable provided they comply with all applicable location and resource rules. Particular attention should be given to Location rules which reserve the water's edge for water dependent uses (N.J.A.C. 7:7E-3.16 and 7:7E-3.32); to the Buffers and compatibility of uses rule N.J.A.C. 7:7E-8.13, which requires that the use be compatible with existing uses in the area or adequate buffering be provided; and the public access to the waterfront rule, N.J.A.C. 7:7E-8.11, which places public access requirements upon the use.

(c) New industrial development is encouraged to locate at or adjacent to existing industrial sites, to the maximum extent practicable.

(d) Industry that is easily accessible to its labor force by foot or public transportation is encouraged.

(e) Marine resource-dependent industry, such as commercial fishing, is encouraged and shall have priority over other waterfront uses, except for recreation.

(f) The cogeneration of electricity with process steam is encouraged.

(g) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-7.8 Mining Use rule**

(a) New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the General Land Areas rule, but shall comply with the Special Areas, and General Water Area rules):

1. The location of mining operations, such as pits, plants, pipelines, and access roads, causes minimal practicable disturbance to significant wildlife habitats, such as wetlands and stands of mature vegetation;

2. The location of new or expanded mining operations is generally contiguous with or adjacent to sites of existing mining operations, or probable locations of mineral resources on nearby sites, in order to concentrate and not scatter the location of mineral extraction areas within a region, recognizing that mineral resources occur only in certain limited areas;

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3. Buffer areas are provided in accordance with N.J.A.C. 7:7E-8.13, using existing vegetation and/or new vegetation and landscaping, to provide maximum feasible screening of new on-land extractive activities and related processing from roads, water bodies, marshes and recreation areas. The Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13) provides guidance related to buffer treatment. A minimum buffer area of 500 feet will be required to existing residential development;

4. The mine development and reclamation plan, including the timetable, phasing, and activities of the new or expanded mining operations, has been designed with explicit and adequate consideration of the ultimate reclamation, restoration, and reuse of the site and use of its surrounding region, once the mineral resource is depleted;

5. The mineral extraction areas shall be reclaimed, contoured and replanted to ensure slope stability, control erosion, afford adequate drainage, provide as natural an appearance as possible, and increase the recreation potential of the restored site within two years of the termination of mining operations;

6. The mining operations control and minimize to the maximum extent practicable adverse impacts from noise and dust, surface and groundwater pollution, and disposal of spoils and waste materials and conform to all applicable Federal, State, and local regulations and standards;

7. The mineral extraction operation will not have a substantial or longlasting adverse impact on coastal resources, including local economies, after the initial adverse impact of removal of vegetation, habitat, and soils, and not including the long-term irretrievable impact of use of the non-renewable mineral resource; and

8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II, and III soils, so that there will be no net loss in the area covered by these soils whenever feasible. The placement of soils may be acceptable to an alternate location if a need is demonstrated, there is no net loss in the area covered by these soils and the placement is consistent with all other coastal rules.

(b) The proposed mining, extension of existing mining or associated mining activities in freshwater wetlands or freshwater wetlands transition areas is subject to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) In addition, proposed mining extension of existing mining or associated mining activities within the 100-year floodplain is subject to the Flood Hazard Control Act (N.J.S.A. 58:16A-50 et seq.).

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-7.9 Port Use rule**

(a) Port uses are concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

(b) Port-related development and marine commerce is encouraged in and adjacent to established port areas. Water-dependent development shall not be preempted by non-water dependent development in these areas.

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(c) New port uses outside of existing ports as defined at N.J.A.C. 7:7E-3.11(a) are acceptable only when there is a clear demonstration of need, and when suitable land and water area is not available in or adjacent to an existing port.

(d) New or expanded ports must be compatible with surrounding land uses and provide for maximum open space and physical and visual access to the waterfront, provided that this access does not interfere with port operations or endanger public health and safety. New or expanded ports must also not interfere with national, State, county or municipal parks, recreational areas, or wildlife refuges.

(e) New, expanded or redeveloped port facilities must have direct access to navigation channels of sufficient depth for anticipated vessel access, with minimal dredge and fill requirements, adequate access to road, rail transportation, and adjacent land with sufficient load bearing capacity for structures.

(f) Limited water-dependent, port-related activity, such as commercial fishing, support facilities and emergency oil spill cleanup storage, is acceptable at the small commercial harbors in the coastal zone.

(g) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-7.10 Commercial facility use rule**

(a) Standards relevant to hotels and motels are as follows:

1. Hotels and motels are commercial establishments, known to the public as hotels, motor-hotels, motels, or tourist courts, primarily engaged in providing lodging, or lodging and meals, for the general public. Also included are hotels and motels operated by membership organizations, whether open to the general public or not.

2. New, expanded or improved hotels and motels are conditionally acceptable provided that the development complies with all Location and Resource rules and with the rule for high-rise structures and is compatible in scale, site design, and architecture with surrounding development.

3. Hotels, motels or restaurants may be water oriented if they take full advantage of a waterfront location.

4. In special urban areas, new hotel, motel, or restaurant development is acceptable in the filled water's edge and over large rivers on structurally sound pilings, provided it is consistent with rules on Filled Water's Edge (N.J.A.C. 7:7E-3.23) and Special Urban Areas (N.J.A.C. 7:7E-3.43), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

5. Rationale: See the note at the beginning of this Chapter.

(b) Standards relevant to retail trade and services are as follows:

1. Retail and trade service is a broad category including, but not limited to, establishments selling merchandise for personal and household consumption, such as food stores and clothing stores; offices; service establishments such as banks and

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insurance agencies; establishments such as restaurants and night clubs; and establishments for participant sports such as bowling alleys and indoor tennis courts.

2. In special urban areas, new or expanded retail trade and service establishments are conditionally acceptable in filled water's edge areas and over large rivers on structurally sound existing pilings as part of mixed use developments, provided that the development is consistent with the rule on Filled Water's Edge (N.J.A.C. 7:7E-3.23) and Special Urban Areas (N.J.A.C. 7:7E-3.43), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

3. Elsewhere in the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable provided that the development:

- i. Complies with all applicable Location and Resource rules;
- ii. Is compatible in scale, site design, and architecture with surrounding development; and
- iii. Where appropriate, utilizes the water area as the central focus of the development.

4. Rationale: See the note at the beginning of this Chapter.

(c) Standards relevant to convention centers and arenas are as follows:

1. "Convention centers" are facilities designed primarily for holding conventions. "Arenas" are commercial facilities designed primarily for spectator sporting events. Arenas do not include indoor tennis courts, bowling alleys and other facilities primarily designed for participant sports, nor arenas affiliated with schools and colleges.

2. New convention centers and arenas are encouraged in special urban areas, and conditionally acceptable in Development regions, provided that the development is compatible in scale, site design, and architecture with surrounding development, and is accessible by public transportation. New convention centers and arenas are discouraged in Barrier Island, Extension and Limited Growth regions.

3. Rationale: See the note at the beginning of this Chapter.

### **7:7E-7.11 Coastal engineering**

(a) Coastal engineering includes a variety of structural and non-structural measures to manage water areas and the shoreline for natural effects of erosion, storms, and sediment and sand movement. Beach nourishment, sand fences, pedestrian control on dunes, stabilization of dunes, dune restoration projects, dredged material disposal and the construction of retaining structures such as bulkheads, gabions, revetments and seawalls are all examples of coastal engineering.

1. The standards relevant to shore protection priorities in (b) below do not apply to water dependent uses within existing ports.

(b) Standards relevant to shore protection priorities are as follows:

1. Non-structural solutions to shoreline erosion problems are preferred over structural solutions. Vegetative shore protection measures have been proven effective, and are preferred at shoreline sites in which they are feasible. Feasibility is dependent on the following factors: shoreline geometry; shoreline slope; sediment type; boat traffic; and wind and extent of exposed land/water surface (fetch). The infeasibility and

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impracticability of a non-structural solution must be demonstrated before structural solutions may be deemed acceptable.

2. Rationale: See the note at the beginning of this Chapter.

(c) Standards relevant to dune management are as follows:

1. Dune restoration, creation and maintenance projects as non-structural shore protection measures, including sand fencing, revegetation, additions of non-toxic appropriately sized material, control of pedestrian and vehicular traffic, are encouraged. These projects shall comply with N.J.A.C. 7:7E-3A, Standards for Beach and Dune Activities.

2. Rationale: See the note at the beginning of this Chapter.

(d) Standards relevant to beach nourishment are as follows:

1. Beach nourishment projects, such as non-structural shore protection measures, are encouraged, provided that:

i. The particle size and type of the fill material is compatible with the existing beach material to ensure that the new material will not be removed to a greater extent than the existing material would be by normal tidal fluctuations;

ii. The elevation, width, slope and form of the proposed beach nourishment projects are compatible with the characteristics of the existing beach;

iii. The sediment deposition will not cause unacceptable shoaling in downdrift inlets and navigation channels; and

iv. Public access to the nourished beach is provided in cases where public funds are used to complete the project.

2. Rationale: See the note at the beginning of this Chapter.

(e) Standards relevant to structural shore protection are as follows:

1. The construction of new shore protection structures or expansion or fortification of existing shore protection structures, including, but not limited to, jetties, groins, seawalls, bulkheads, gabions and other retaining structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material is acceptable only if it meets all of the following five conditions:

i. The structure is essential to protect water dependent uses or heavily used public recreation beach areas in danger from tidal waters or erosion, or the structure is essential to protect existing structures and infrastructure in developed shorefront areas in danger from erosion, or the structure is essential to mitigate, through, for example, the construction of a retained earthen berm, the projected erosion in an erosion hazard area along a headland and provide erosion protection for a development that is otherwise acceptable under the Coastal Zone Management rules;

ii. The structure will not cause significant adverse impacts on local shoreline sand supply;

iii. The structure will not create net adverse shoreline sand movement downdrift, including erosion or shoaling;

iv. The structure will cause minimum feasible adverse impact to living marine and estuarine resources;

v. The structure is consistent with the State's Shore Protection Master Plan;

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vi. If the proposed project requires filling of a water area it must be consistent with the General Water Area rule for Filling (N.J.A.C. 7:7E-4.10) and all other relevant coastal rules.

2. Maintenance or construction of an existing bulkhead is conditionally acceptable provided that it meets (e)2i, ii or iii below. All measurements shall be made from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the replacement bulkhead.

i. The replacement bulkhead is located within 18 inches outshore of the existing bulkhead, except in accordance with (e)2ii or iii below;

ii. The replacement bulkhead is located no more than 24 inches outshore of the existing bulkhead when the replacement bulkhead is constructed of a corrugated material, and the replacement bulkhead is located as close as possible to the face of the existing bulkhead; or

iii. Maintenance or reconstruction of an existing bulkhead which does not meet (e)2i or ii above shall be considered new construction, unless it can be demonstrated that the existing bulkhead cannot physically accommodate a replacement in accordance with (e)2i or ii above. In such case, the replacement bulkhead shall be as close as physically possible to the original bulkhead alignment.

3. Stone rip-rap and sloped concrete and gabion revetments which allow for growth of vegetation are the preferred form of retaining structures.

4. Public access, including parking where appropriate, must be provided to publicly funded shore protection structures and to waterfront land created by public projects, unless public access would create a safety hazard to users. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure are prohibited.

5. The construction of bulkheads subject to wave runup forces (V-Zones) must be designed and certified by a professional engineer to withstand the forces of wave runup, and must include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and may be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, appropriate subbase and filter cloth must be incorporated into the design. A provision for the use of rip-rap along the seaward toe of the bulkhead structure may be required on a case-by-case basis, as a means to limit the scour potential.

6. Rationale: See the note at the beginning of this Chapter.

#### **7:7E-7.12 Dredged material placement on land**

(a) Dredged material placement is the disposal or beneficial use of sediments removed during dredging operations. Beneficial uses of dredged material include, but are not limited to, fill, topsoil, bricks and lightweight aggregate. This rule applies to the placement of dredged material landward of the spring high water line. The standards for dredged material disposal in Water Areas are found at N.J.A.C. 7:7E- 4.8.

(b) Dredged material placement on land is conditionally acceptable provided that the use is protective of human health, groundwater quality, and surface water quality, and manages ecological risks. Testing of the dredged material may be required as needed to determine the acceptability of the placement of the material on a particular site.

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(c) Dredged material disposal is prohibited on wetlands unless the disposal satisfies the criteria found at N.J.A.C. 7:7E-3.27.

(d) The use of dredged material of appropriate quality and particle size for purposes such as restoring landscape, enhancing farming areas, capping and remediating landfills and brownfields, beach protection, creating marshes, capping contaminated dredged material disposal areas, and making new wildlife habitats is encouraged.

(e) Effects associated with the transfer of the dredged materials from the dredging site to the disposal site shall be minimized to the maximum extent feasible.

(f) Dredged material disposal in wet and dry borrow pits is conditionally acceptable (see N.J.A.C. 7:7E-3.14, and 3.35).

(g) If pre-dredging sediment analysis indicates contamination, then special precautions shall be imposed including but not necessarily limited to increasing retention time of water in the disposal site or rehandling basin through weir and dike design modifications, use of coagulants, ground water monitoring, or measures to prevent biological uptake by colonizing plants.

(h) All potential releases of water from confined (diked) disposal sites and rehandling basins shall meet existing State Surface Water Quality Standards (N.J.A.C. 7:9B) and State Groundwater Quality Standards (N.J.A.C. 7:9).

(i) The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.

(j) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-7.13 National defense facilities use rule**

(a) A national defense facility is any building, group of buildings, marine terminal, or land area owned or operated by a defense agency (Army, Navy, Air Force, Marines, Coast Guard) and used for training, research, material support, or any other defense-related use.

(b) National defense facilities are conditionally acceptable provided the development meets either (b)1 or 2 below:

1. The proposed facility is consistent with all relevant Coastal Zone Management rules; or



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2. The proposed facility is coastally dependent, will be constructed and operated with maximum possible consistency with Coastal Zone Management rules, and will result in minimal feasible degradation of the natural environment.

(c) The construction of new facilities or expansion of existing facilities on land not owned by a defense agency is discouraged, unless it can be shown that the facility cannot feasibly be accommodated on an existing base.

(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-7.14 High Rise Structures**

(a) High-rise structures are structures which are more than six stories or more than 60 feet in height as measured from existing preconstruction ground level.

(b) The standards for high-rise structures are as follows:

1. High-rise structures are encouraged to locate in an urban area of existing high density, high-rise and/or intense settlements;

2. High-rise structures within the view of coastal waters shall be separated from coastal waters by at least one public road or an equivalent area (at least 50 feet) physically and visually open to the public except as provided by N.J.A.C. 7:7E-3.48;

3. The longest lateral dimension of any high-rise structure must be oriented perpendicular to the beach or coastal waters, except for a high-rise structure that is located in the Redevelopment Zone of the City of Long Branch and authorized pursuant to the Long Branch Redevelopment Zone Permit at N.J.A.C. 7:7-7.4.

4. The proposed structure must not block the view of dunes, beaches, horizons, skylines, rivers, inlets, bays, or oceans that are currently enjoyed from existing residential structures, public roads or pathways, to the maximum extent practicable;

5. High-rise structures outside of the Hudson River waterfront special area as defined by N.J.A.C. 7:7E-3.48 shall not overshadow the dry sand beach between 10:00 A.M. and 4:00 P.M. between June 1 and September 20, and shall not overshadow waterfront parks year round;

6. The proposed structure must be in character with the surrounding transitional heights and residential densities, or be in character with a municipal comprehensive development scheme requiring an increase in height and density which is consistent with all applicable Coastal Zone Management rules;

7. The proposed structure must not have an adverse impact on air quality, traffic, and existing infrastructure; and

8. The proposed structure must be architecturally designed so as to not cause deflation of the beach and dune system or other coastal environmental waterward of the structure.

(c) The high-rise structures rule shall not apply to the following types of development:

1. Development in Atlantic City on existing ocean piers which meets the standards at N.J.A.C. 7:7E-3.49(c) or pedestrian bridges which meet the standards at N.J.A.C. 7:7E-3.49(i)1; or

2. Utility structures that have a demonstrated need.

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(d) Rationale: See the note in the beginning of this Chapter.

## **SUBCHAPTER 8. RESOURCE RULES**

### **7:7E-8.1 Purpose**

(a) In addition to satisfying the location and use rules, a proposed development must satisfy the requirements of this subchapter. This subchapter contains the standards the Department utilizes to analyze the proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region.

### **7:7E-8.2 Marine Fish and Fisheries**

(a) Marine fish are marine and estuarine animals other than marine mammals and birds. Marine fisheries means:

1. One or more stocks of marine fish which can be treated as a unit for the purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and
2. The catching, taking or harvesting of marine fish.

(b) Any activity that would adversely impact on the natural functioning of marine fish, including the reproductive, spawning and migratory patterns or species abundance or diversity of marine fish, is discouraged. In addition, any activity that would adversely impact any New Jersey based marine fisheries or access thereto is discouraged, unless it complies with (c) below.

(c) The following coastal activities are conditionally acceptable provided that the activity complies with the appropriate general water area rule(s) at N.J.A.C 7:7E-4;

1. Construction of submerged cables and pipelines;
2. Sand and gravel mining to obtain material for beach nourishment, provided :
  - i. The beach nourishment project is in the public interest;
  - ii. There are no alternative borrow sites that would result in less impact to marine fish and fisheries;
  - iii. Any alteration of existing bathymetry within Prime Fishing areas, as defined at N.J.A.C. 7:7E-3.4, does not reduce the high fishery productivity of these areas; and
  - iv. Measures are implemented to minimize and compensate for impacts to marine fish and fisheries; and
3. The establishment of Aquaculture Development Zones in accordance with N.J.S.A. 4:27-1 et seq. and any regulations developed and adopted pursuant thereto.

(d) Rational: See the note at the beginning of this Chapter.

### **7:7E-8.4 Water Quality**

(a) As required by Section 307(f) of the Federal Coastal Zone Management Act (P.L. 92-583), Federal, State and local water quality requirements established under the Clean Water Act (33 U.S.C. ?1251) shall be the water resource standards of the coastal management program. These requirements include not only the minimum requirements

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imposed under the Clean Water Act but also the additional requirements adopted by states, localities, and interstate agencies pursuant to Section 510 of the Clean Water Act and such statutes as the New Jersey Water Pollution Control Act. In the Delaware River Basin, the requirements include the prevailing "Basin Regulations-Water Quality" adopted by the Delaware River Basin Commission as part of its Comprehensive Plan. In the waters under the jurisdiction of the Interstate Sanitation Commission in the New Jersey-New York metropolitan area, the requirements include the Interstate Sanitation Commission's Water Quality Regulations. Department rules related to water pollution control and applicable throughout the entire coastal zone include, for example, the Surface Water Quality Standards (N.J.A.C. 7:9-4), the rules concerning Wastewater Discharge Requirements (N.J.A.C. 7:9-5), the Ground-Water Quality Standards (N.J.A.C. 7:9-6), and the Regulations Concerning the New Jersey Pollutant Discharge Elimination System (N.J.A.C. 7:14A).

(b) Coastal development which would violate the Federal Clean Water Act, or State laws, rules and regulations enacted or promulgated pursuant thereto, is prohibited. In accordance with N.J.A.C. 7:15 concerning the Water Quality Management Planning and Implementation process, coastal development that is inconsistent with an approved Water Quality Management (208) Plan under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., is prohibited.

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-8.5 Surface water use**

(a) Surface water is water in lakes, ponds, streams, rivers, bogs, wetlands, bays, and ocean that is visible on land.

(b) Coastal development shall demonstrate that the anticipated surface water demand of the facility will not exceed the capacity, including phased planned increases, of the local potable water supply system or reserve capacity, and that construction of the facility will not cause unacceptable surface water disturbances, such as drawdown, bottom scour, or alteration of flow patterns.

1. Coastal development shall conform with all applicable Department and, in the Delaware River Area, Delaware River Basin Commission requirements for surface water diversions.

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-8.6 Groundwater Use**

(a) Groundwater is all water within the soil and subsurface strata that is not at the surface of the land. It includes water that is within the earth that supplies wells and springs.

(b) Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development, alone and in conjunction with other groundwater diversions proposed or existing in the region, will

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not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, or significantly decrease the base flow of adjacent water sources. Groundwater withdrawals shall not exceed the aquifer's safe yield.

1. Coastal development shall conform with all applicable Department and, in the Delaware River Basin, Delaware River Basin Commission requirements for groundwater withdrawal and water diversion rights.

(c) Rationale: See the note at the beginning of this Chapter.

### **7:7E-8.7 Stormwater management**

(a) Stormwater runoff is the flow of water on the surface of the ground, resulting from precipitation.

(b) Coastal development shall employ a site design which, to the extent feasible, minimizes the amount of impervious coverage on a project site. In addition, the development shall use the best available technology to minimize the amount of stormwater generated, minimize the rate and volume of off-site stormwater runoff, maintain existing on-site infiltration, simulate natural drainage systems and minimize the discharge of pollutants to ground or surface waters. Consistent with the provisions of the Stormwater Management rule, the overall goal of the post-construction stormwater management system design shall be the reduction from the predevelopment level of total suspended solids (TSS) and soluble contaminants in the stormwater.

1. Non-structural management practices, including, but not limited to, cluster land use development, minimum site disturbance, open space acquisition, use of sheet flow from streets and parking areas, and the protection of wetlands, steep slopes and vegetation shall be incorporated into project designs. These non-structural management practices shall be utilized, unless it is demonstrated that these practices are not feasible, from an engineering perspective, on a particular site.

2. In determining the appropriate stormwater management system design for a particular project, the existing physical site conditions must be carefully considered. Slopes, depth to seasonal high water table, soil type and texture, watershed area, and property areas are all critical to the selection of a suitable stormwater management technique or combination of techniques.

(c) Standards relevant to stormwater management system design are as follows:

1. All stormwater management systems shall be designed in accordance with this section, and shall be consistent with the Standards for Soil Erosion and Sediment Control in New Jersey (N.J.A.C. 2:90). The use of control techniques not specifically listed in this section will be evaluated on a case-by-case basis, and may be permitted in conjunction with the techniques discussed in this section. Alternative techniques may be acceptable, provided that it can be demonstrated that they satisfy the design standards of this section. Complete justification for selection of a particular stormwater management technique, including the engineering basis for exclusion of Department's preferred techniques, shall be provided as part of a complete permit application submission.

2. The following apply to development proposed in tidal areas:

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i. The construction of stormwater outfalls into tidal waters may require the incorporation of a tide check or similar valve depending on the physical conditions of the site, including, but not limited to, land elevation, drainage area, bulkhead elevation, tidal elevation and 100-year flood elevation.

ii. Because tidal flooding is the result of higher than normal tides, the 100-year tidal flood elevation is not affected by development. Therefore, development activities that are located along or adjacent to tidal water bodies and segments of tidal water bodies, as specified below, are not required to comply with the flood control requirements of (c)3 below. These affected tidal waters include:

(1) Atlantic Ocean;

(2) All water bodies named on the U.S. Geological Survey 7.5' topographic maps as "bays," "canals," "coves," "guts," "harbors," "inlets," "sounds," "thorofares," and "channels," except for the portion of the Delaware River near Camden called "Back Channel";

(3) All man-made lagoons and canals discharging into the water bodies listed in (c)2ii(2) above;

(4) All sections of the "Intracoastal Waterway";

(5) Arthur Kill (entire reach); Hackensack River (Newark Bay to the Pulaski Skyway); Hudson River; Manasquan River (Atlantic Ocean to Route 70); Metedeconk River (Barnegat Bay to Route 70); Navesink River (Shrewsbury River to Coopers Bridge); Passaic River (Newark Bay to the Pulaski Skyway); Raritan River (Raritan Bay to the New Jersey Turnpike); Shark River (Atlantic Ocean to confluence with Laurel Gully Brook; Shrewsbury River (Sandy Hook Bay to Seven Bridge Road); Waretown Creek (Atlantic Ocean to Route 9); Whale Brook (Raritan Bay to Route 35); Wreck Pond (Atlantic Ocean to Route 71); and

(6) Along watercourses not specifically identified in (c)2ii(1) through (5) above, that flow into tidal water bodies listed above, the reach between the mouth and either the first bridge or culvert upstream or the point upstream where the regulatory flood (as per N.J.A.C. 7:13) exceeds the 100-year tidal elevation, whichever is closest to the mouth.

3. The following apply to flood control design:

i. If a regional stormwater management plan has been developed for the watershed, the applicant shall meet the flood control requirement of the Stormwater Management rule by conforming to the regional management plan. If no regional stormwater management plan has been developed then the applicant shall design the stormwater system so that the post-development peak runoff rate for the two year storm event is 50 percent of the pre-development peak runoff rate and the post-development peak runoff rates for the 10- and 100-year storm events are 75 percent of the pre-development peak runoff rate.

ii. The design storms used to achieve the required level of site runoff control described in (c)3i above shall be defined as either the 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture Soil Conservation Service, or as the total rainfall uniformly distributed throughout the critical storm duration as determined by the Modified Rational Method (T.J. Mulvaney, 1851, On the Use of Self-registering Rain and Flood Gages in Making Observations of the Relations of Rainfall and Flood Discharges in a Given Catchment, Proc. Inst. Civil Engineering,

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Ireland, vol. 4, pp. 18-31). A 20 acre drainage area limit shall be used for the Modified Rational Method unless otherwise approved by the Department.

iii. For the purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good hydrologic condition if the lands are pastures, lawns or parks, with good cover if the lands are woods, or with conservation treatment if the land is cultivated, regardless of conditions existing at the time of computation. For lands to be considered cultivated, they must have been used for such purposes without interruption for a period of at least 5 years prior to the time of computation. If such use has not occurred or cannot be satisfactorily documented, woods shall be assumed to be the predeveloped land condition. In computing pre-development runoff, all significant land features, such as ponds, depressions or hedgerows which increase the ponding factors shall be accounted for.

iv. Plans and calculations shall be provided to show that the discharge will not cause erosion along the flow path between the outfall and the receiving waterbody. All stormwater discharge paths shall be stabilized in accordance with the criteria in N.J.A.C. 2.90, Standards for Soil Erosion and Sediment Control in New Jersey.

4. The following apply to water quality control design:

i. The water quality control standard shall be the maximum feasible reduction of the total suspended solids (TSS) loading after construction has been completed, up to and including the water quality design storm. At a minimum, post-construction loadings of TSS shall match the predevelopment loadings of TSS for the water quality design storm.

(d) Stormwater management is vital to protecting and improving New Jersey's water quality and control techniques, and information about their effectiveness in different situations is evolving. The Department has prepared the following hierarchy of the stormwater management techniques based on its experience to date. The goal of the hierarchy is to avoid the use of techniques that have not been successful in previous similar situations and to guide permit applicants toward techniques that are likely to be successful. At the same time, the Department is open to innovative proposals or additional information that may help better manage stormwater on a particular site or in a particular region. For each of the techniques identified in this rule, the Department has included conditions that shall be considered, but the Department recognizes that this is an evolving technology and will evaluate individual proposals on a case by case basis. The Land Use Regulation Program has assigned to the following stormwater management techniques a hierarchy of preferences for use in project design categorized as either "Conditionally Acceptable" or "Discouraged." If an applicant cannot make maximum use of "Conditionally Acceptable" stormwater management techniques, based on physical or engineering constraints, the Department encourages the use of a combination of techniques. If use of a particular technique on a property can be designed to meet a majority of that technique's normal requirements, then an applicant may still be required to use that stormwater management technique, if use of that technique on that property remains environmentally preferable to alternative techniques. In addition, none of the techniques listed in this section may be constructed "on-stream" unless the stormwater management system is part of a Departmental-approved regional stormwater plan.

1. Conditionally Acceptable: The following list represents the stormwater management techniques which may be incorporated into project design, subject to the

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specified conditions. The six "Conditionally Acceptable" techniques in this section are not listed in any order of preference, and shall be equally evaluated on a case-by-case basis.

i. The use of newly constructed wetlands is conditionally acceptable, provided that the following conditions are satisfied:

(1) The water depth in the wetlands is less than one foot (six inches is optimal), with the exception of the 25 percent area discussed at (d)1i(6) below;

(2) The perimeter of the water area shall be graded to form a 10 to 20 foot wide shallow bench for aquatic emergents, for at least half of the water area perimeter;

(3) The surface area of the wetland shall constitute about two to three percent of the total area of the contributing watershed;

(4) Wetland vegetation shall be commercial wetland plant stock (either live plants or dormant rhizomes), as opposed to transplants or seeding;

(5) At least two primary native or non-aggressive exotic wetlands species, which are hardy and rapid colonizers, shall be planted over about 30 percent of the total shallow water area. Each primary species shall be planted in three or four monospecific stands, with individual plants about two to three feet apart. Up to three secondary wetland species, that are not as aggressive in colonizing a pond, shall be randomly distributed in clumps around the perimeter of the wetlands;

(6) If a basin is exclusively designed to act as a shallow wetland, at least 25 percent of the total surface area of the inundated area shall be reserved for open water areas that are two or more feet deep, to provide habitat for waterfowl and marsh birds;

(7) The use of native fish stocks in constructed wetlands is encouraged, as a means to control mosquitos;

(8) The use of a clay liner in the system design may be required, depending on site conditions, in order to ensure adequate hydrology in the system; and

(9) The surface and drainage shall be sufficient so that the inflow of dry weather flow into the wetlands will be large enough to sustain sufficient water during dry periods and prevent stagnation.

ii. The use of wet ponds/retention basins is conditionally acceptable, provided that the following conditions are satisfied:

(1) The ratio of permanent pool or basin volume to the runoff volume for the water quality storm runoff shall be greater than three to one;

(2) The pool must be shallow enough to avoid thermal stratification, and deep enough to minimize algal blooms and resuspension of decomposing organics and other previously deposited materials;

(3) The pond shall be designed so that the inflow of dry weather flow either from the contributing drainage area or ground water base flow, into the wet pond will be large enough to sustain sufficient water during dry periods and prevent stagnation;

(4) Wet ponds shall be configured so as to promote maximum sedimentation;

(5) The use of native fish stocks in wet ponds is strongly encouraged, as a means to control mosquitos; and

(6) The use of a clay liner in the system design may be required, depending on site conditions, to ensure adequate hydrology in the system.

iii. The use of detention basins is conditionally acceptable, provided that the following conditions are satisfied:

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(1) The water quality design for detention will require prolonged detention of the water quality design storm which is a one-year frequency 24-hour storm using the rainfall distribution recommended for New Jersey by the U.S. Department of Agriculture, Soil Conservation Service, or a storm of 1.25 inches of rainfall in two hours. Provisions shall be made for the water quality design storm to be retained and released so as to evacuate 90 percent or less in 18 hours in the case of residential developments, and 36 hours in the case of other developments. This is usually accomplished by a small outlet orifice at the lowest level of detention storage, with a large outlet or outlets above the level sufficient to control the water quality design storm. The minimum allowable orifice diameter shall be three inches. If the above detention time requirement would result in a pipe smaller than three inches in diameter, then additional methods shall be employed to remove the TSS prior to discharge into the basin. The retention time shall be considered brim-drawdown time, and therefore begin at the time of peak storage;

(2) The bottom of the basin shall be at an elevation above the seasonal high water table. Where possible, at least three feet of vertical separation between the bottom of the basin and the seasonal high water table shall be provided to promote infiltration. If the seasonal high water table is one foot or less below the bottom of the basin, then the use of constructed wetlands or a wet pond shall be considered;

(3) Native and non-aggressive exotic vegetation for use in detention basins shall be the approved species as determined by the appropriate Soil Conservation District; and

(4) All low-flow channels shall be constructed of rip-rap, grass paver blocks or similar material that will allow for the growth of vegetation. The use of underdrains below the low flow channel will be allowed if necessary to dry out the soil to allow vehicular access for maintenance, such as tractors to cut the vegetation.

iv. The use of vegetated swales is conditionally acceptable, provided that the following conditions are satisfied:

(1) The bottom of the swale shall be above the elevation of the seasonal high water table;

(2) Swales shall be used in conjunction with other stormwater management techniques (detention basins, wet ponds, constructed wetlands, underground infiltration) as internal conveyances within a stormwater collection system, receiving only overland flow (that is, as replacements for curb and gutter flow or on highway medians);

(3) The use of vegetated swales shall be limited to sites where impervious cover is present on less than five percent of the site, unless combined with other stormwater management techniques;

(4) Swales accepting concentrated discharges from pipes at the end of the stormwater system will not be accepted for water quality treatment unless there are no other viable methods available to remove the TSS prior to discharge and the length of the swale is the maximum achievable in relation to the site conditions;

(5) The swales shall be designed to provide the maximum feasible vegetation contact time ranging from five to 20 minutes where feasible, for the water quality storm;

(6) The slope of the swale shall not be less than 0.5 percent nor greater than 5 percent;

(7) Vegetated swales shall only be used where the expected velocity of flow does not exceed 1.5 feet per second;



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(8) The use of rip-rap, or other stabilization material that will allow vegetative growth, in conjunction with appropriate vegetation, may be incorporated into the design of the swale, if a stable condition using vegetation alone cannot be achieved;

(9) Vegetation for use in the swales shall include native species, of sufficient height to extend above the expected elevation of the water quality design storm in the swale and shall be coordinated with the local Soil Conservation District to determine the suitability for use on the site; and

(10) In addition to the standards in (d)2i(1) through (9) above, all swales must be designed in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey," N.J.A.C. 2:90.

v. The use of infiltration basins is conditionally acceptable, provided that the following conditions are satisfied:

(1) There shall be at least two feet of vertical separation between the bottom of the proposed infiltration basin and the seasonal high water table;

(2) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

(3) No topsoil may be placed in the basin bottoms;

(4) The basin bottom shall be scarified after the basin is formed, after which no other construction within the basin may occur;

(5) All of the water quality storm shall be stored and recharged within 72 hours of the storm; and

(6) There is an adequate back-up drainage system provided, in the event that the infiltration capacity of the infiltration basin fails.

vi. The use of perforated pipe for the purpose of underground recharge of stormwater is conditionally acceptable, provided the following conditions are satisfied:

(1) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

(2) Runoff shall be filtered through a basin and/or vegetated swale, to enhance water quality, prior to discharge into a perforated pipe system;

(3) There shall be at least three feet of vertical separation between the bottom of the perforated pipe trench and the seasonal high water table;

(4) All underground recharge pipes shall be 360 degree perforated;

(5) The required pipe size shall be determined based on the peak discharge for the required post-development design storm; and

(6) In addition to the standards set forth above, all underground infiltration systems shall be designed in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey," N.J.A.C. 2:90.

2. Discouraged: The following list represents techniques which are not likely to be approved, unless it can be clearly documented that the use of other "Conditionally Acceptable" techniques has been maximized or is infeasible for engineering reasons.

i. Underground storage is not effective and cannot be utilized as a means to provide water quality treatment of stormwater. Underground storage for the purpose of controlling stormwater volume is discouraged, but may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other "Conditionally Acceptable" stormwater management techniques, as described in (d)1 above, has been maximized, or can be documented as infeasible.

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Complete justification for the exclusion of "Conditionally Acceptable" techniques must be provided as part of the permit application submission; and

(2) Water quality treatment shall be provided prior to stormwater discharge to the underground storage system.

ii. The use of sediment traps and oil/grease separators is generally discouraged because they have proven ineffective, but they may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other "Conditionally Acceptable" techniques, as described in (d)1 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of "Conditionally Acceptable" techniques must be provided as part of the permit application submission;

(2) The use of sediment traps and oil/grease separators shall be limited to drainage areas less than 0.1 acre in size; and

(3) For drainage areas greater than 0.1 acre in size, the use of sediment traps and oil/grease separators shall be combined with other stormwater management techniques as described in this subsection.

iii. The use of porous asphalt pavement is discouraged, due to the problems associated with continued maintenance and functioning of these types of infiltration systems. As set forth in this subparagraph, the surface of porous asphalt pavement shall be cleaned regularly to avoid becoming clogged by fine grained material. Porous pavement does not include gravel, crushed shell or paver blocks (non-grout). The use of porous pavement may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other "Conditionally Acceptable" techniques, as described in (d)1 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of "Conditionally Acceptable" techniques must be provided as part of the permit application submission;

(2) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

(3) The use of porous asphalt pavement shall be limited to light traffic areas only, such as parking areas;

(4) The areas of porous asphalt pavement shall be adequately buffered, through vegetative screening, to avoid adjacent sources of aeolian sand and silt;

(5) The application shall include a strict maintenance schedule, which may be required to include, but not be limited to, vacuum sweeping on a weekly basis and high pressure water washing of the pavement on a monthly basis;

(6) The paving uses no asphalt sealers; and

(7) The use of sand during periods of snow is prohibited on porous asphalt areas.

(e) The species and quantity of native or non-invasive exotic vegetation used as part of a stormwater management system design shall be consistent with the standards and specifications of the local Soil Conservation District. In general, the use of vegetation shall be limited to low maintenance native species, shall be pest resistant, and shall be drought or water tolerant, depending on the specific application. The use of native species is encouraged for all vegetated swales.

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(f) Standards relevant to stormwater management system maintenance are as follows:

1. The long-term maintenance of stormwater management systems is a critical factor in the ongoing functioning of these systems. In cases where these existing systems have failed, the most common cause is inadequate maintenance of the system. Therefore, the following maintenance requirements shall be included as part of all stormwater management plans; shall be specifically identified on the site plans and in a stormwater system maintenance report for any proposed project; and, if required by the Program, shall be recorded with the deed for the property in question:

i. All information regarding the long-term maintenance of proposed stormwater management systems shall be provided as part of the initial permit application submission;

ii. The party or parties responsible for long-term maintenance of the system shall be clearly designated, and documentation of the assumption of this responsibility shall be provided as part of the permit application submission;

iii. All maintenance records shall be written, maintained and provided to the Department upon request;

iv. Maintenance of detention basins shall include, but not be limited to, the following activities:

(1) Visual inspection of all components of the stormwater management system at least twice each year;

(2) Removal of silt, soil, litter and other debris from all catch basins, inlets and drainage pipes, on a twice-yearly basis;

(3) Maintenance, including grass cutting, and replacement (if necessary) of all landscape vegetation within the basins, at least once each year;

(4) Removal of silt from within the basins at least once each year, or more frequently if noticeable buildup occurs, for disposal in an acceptable location; and

(5) The basin bottoms shall be aerated at least once each year, and shall be scraped and replanted at least once every five years, to prevent the sealing of the basin bottom by silt deposits.

v. Maintenance of constructed wetlands shall include, but not be limited to, the following:

(1) Visual inspection of all components of the system at least once every six months;

(2) Removal of silt, litter and other debris from all catch basins, inlets and drainage pipes at least once every six months, or as required;

(3) Vegetation harvesting at least once each year; and

(4) The approval of a stormwater management system which involves newly constructed wetlands on an upland site will automatically include the issuance of a Freshwater Wetlands General Permit 1 for maintenance of the wetlands, which shall be renewed by the permittee every five years.

vi. Maintenance of wet ponds/retention basins shall include, but not be limited to, annual monitoring of water quality, dissolved oxygen, vegetative growth and fish population.

vii. Maintenance of infiltration facilities shall include, but not be limited to:

(1) Annual tilling operation to maintain infiltration capacity, with revegetation as necessary; and

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(2) Sediment removal shall be followed by retilling, at a time when the facility is thoroughly dry.

viii. Maintenance of swales, including, but not limited to, removal of grass clippings and leaves, shall be performed so that the facilities remain in working order.

ix. Maintenance of underground perforated pipe infiltration systems shall include, but not be limited to:

(1) Visual inspection of all system components at least twice each year;

(2) Vacuuming of all storm sewer inlets once every six months (frequency of vacuuming may be adjusted if first year maintenance records indicate that sediment and debris accumulation is insignificant; and

(3) Reverse flushing and vacuuming shall be required if system inspections indicate significant accumulation of sediment in the pipes.

(g) Rationale: See the note at the beginning of this Chapter.

### **7:7E-8.8 Vegetation**

(a) Vegetation is the plant life or total plant cover that is found on a specific area, whether indigenous or introduced by humans.

(b) Coastal development shall preserve, to the maximum extent practicable, existing vegetation within a development site. Coastal development shall plant new vegetation, particularly appropriate coastal species native to New Jersey to the maximum extent practicable.

(c) Rationale: See the note at the beginning of this Chapter.

### **7:7E-8.9 (Reserved)**

### **7:7E-8.10 Air quality**

(a) The protection of air resources refers to the protection from air contaminants that injure human health, welfare or property, and the attainment and maintenance of State and Federal air quality goals and the prevention of degradation of current levels of air quality.

(b) Coastal development shall conform to all applicable State and Federal regulations, standards and guidelines and be consistent with the strategies of New Jersey's State Implementation Plan (SIP). See N.J.A.C. 7:27 and New Jersey SIP for ozone, particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and visibility.

(c) Coastal development shall be located and designed to take full advantage of existing or planned mass transportation infrastructures and shall be managed to promote mass transportation services, in accordance with the Traffic rule, N.J.A.C. 7:7E-8.14.

(d) Rationale: See the note at the beginning of this Chapter.

### **7:7E-8.11 Public Access to the Waterfront**

*Note: This is a courtesy copy of the Coastal Zone Management rules. The official version is in the New Jersey Administrative Code (N.J.A.C. 7:7E). Should there be any discrepancies between the courtesy copy and the official version, the official version will govern.*

(a) Public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide permanent perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of the waterfront experiences is discouraged.

1. All development adjacent to water shall, to the maximum extent practicable, provide, within its site boundary, a linear waterfront strip accessible to the public. If there is a linear waterfront accessway on either side of the site and the continuation of which is not feasible within the boundaries of the site, a pathway around the site connecting to the adjacent parts, or potential parts of the waterfront path system in adjacent parcels shall be provided.

2. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection funding.

3. Public access must be clearly marked, provide parking where appropriate, be designed to encourage the public to take advantage of the waterfront setting, and must be barrier free where practicable.

4. A fee for access, including parking where appropriate, to or use of publicly owned waterfront facilities shall be no greater than that which is required to operate and maintain the facility and must not discriminate between residents and non-residents except that municipalities may set a fee schedule that charges up to twice as much to non-residents for use of marinas and boat launching facilities for which local funds provided 50 percent or more of the costs.

5. All establishments, including marinas and beach clubs, which control access to tidal waters shall comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

6. Public access, including parking where appropriate, shall be provided to publicly funded shore protection structures, beaches nourished with public funds and to waterfronts created by public projects unless such access would create a safety hazard to the user. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure or beach are prohibited.

7. Development located within the Hudson River Waterfront Special Area shall comply with the additional requirements of the Hudson River Waterfront rule, N.J.A.C. 7:7E-3.48.

8. Development along Raritan Bay within Monmouth County shall be consistent with the Bayshore Waterfront Access Plan (Monmouth County Planning Board and the Trust for Public Land for NJDEP, 1987).

9. Development within the Atlantic City Special Area shall comply with the additional requirements of the Atlantic City rule at N.J.A.C. 7:7E-3.49.

10. Development elsewhere in the coastal zone shall conform with any adopted municipal, county or regional waterfront access plan, provided the plan is consistent with the Coastal Zone Management rules.

11. The Department may require some or all of the public access portion of a site to be dedicated for public use through measures such as a conservation restriction.

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12. Development adjacent to coastal waters shall provide fishing access within the provision of public access wherever feasible and warranted.

13. Development adjacent to coastal waters shall provide barrier free access within the provisions of public access wherever feasible and warranted by the characteristics of the access area.

14. For developments which reduce existing on-street parking that is used by the public for access to the waterfront, mitigation for the loss of these public parking areas is required at a minimum of 1:1 within the proposed development site or other location within 250 feet of the proposed project site.

(c) At sites proposed for the construction of single family or duplex residential dwellings, which are not part of a larger development, public access to the waterfront is not required as a condition of the coastal permit.

(d) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-8.12 Scenic Resources and Design**

(a) Scenic resources include the views of the natural and/or built landscape.

(b) Large-scale elements of building and site design are defined as the elements that compose the developed landscape such as size, geometry, massing, height and bulk structures.

(c) New coastal development that is visually compatible with its surroundings in terms of building and site design, and enhances scenic resources is encouraged. New coastal development that is not visually compatible with existing scenic resources in terms of large-scale elements of building and site design is discouraged.

(d) In all areas, except the Northern Waterfront region, the Delaware River Region and Atlantic City, new coastal development adjacent to a bay or ocean or bayfront or oceanfront, beach, dune or boardwalk and higher than 15 feet in height measured from the existing grade of the site or boardwalk shall:

1. Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists; and

2. Be separated from either the beach, dune, boardwalk, or waterfront, whichever is further inland, by a distance of equal to two times the height of the structure. However, exceptions may be made for infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where the set-back requirement is visually incompatible with the existing character of the area.

(e) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-8.13 Buffers and Compatibility of Uses**

(a) Buffers are natural or man-made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

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(b) Development shall be compatible with adjacent land uses to the maximum extent practicable.

1. Development that is likely to adversely affect adjacent areas, particularly Special Areas N.J.A.C. 7:7E-3, or residential or recreation uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case-by-case basis.

2. The standards for wetland buffers are found at N.J.A.C. 7:7E-3.28.

3. The following apply to buffer treatment:

i. All buffer areas shall be planted with appropriate vegetative species, either through primary planting or supplemental planting. This landscaping shall include use of mixed, native vegetative species, with sufficient size and density to create a solid visual screen within five years from the date of planting.

ii. Buffer areas which are forested may require supplemental vegetative plantings to ensure that acceptable visual and physical separation is achieved.

iii. Buffer areas which are non-forested will require dense vegetative plantings with mixed evergreen and deciduous trees and shrubs. Evergreens must be at least eight feet tall at time of planting; deciduous trees must be at least three inches caliper, balled and burlapped; shrubs must be at least three to four feet in height.

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-8.14 Traffic**

(a) Traffic is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, where feasible, incorporated into the design and management of a proposed development, to reduce the number of individual vehicle trips generated as a result of the facility. Examples of alternative means of transportation include: van pooling, staggered working hours and installation of ancillary public transportation facilities such as bus shelters.

(c) When the level of service of traffic systems is disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal development, the satisfaction of the New Jersey Department of Transportation and any regional agencies.

(d) Any development that causes a location on a roadway to operate in excess of capacity Level D is discouraged. A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better. A developer may, by incorporating design modification or by contributing to the cost of traffic improvements, be able to

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address traffic problems resulting from the development, in which case development would be conditionally acceptable. Determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

(e) Coastal development located in municipalities which border the Atlantic Ocean, except as excluded under (e) 1, 2 or 3 below, shall provide sufficient on-site and/or off-site parking for its own use at a ration of two spaces per residential unit. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with N.J.A.C. 7:7E-7.5(d), the parking facility rule, where applicable.

1. The non-oceanfront portions of the following municipalities which border the Atlantic Ocean are excluded from the parking requirement at (e) above:

i. Neptune Township, Monmouth County: Those portions of this municipality which are west of State Highway 71;

ii. Brick, Dover and Berkeley Townships, Ocean County: Those portions of these municipalities which are not located between Barnegat Bay and the Atlantic Ocean;

iii. Upper Township, Cape May County: Those portions of this municipality which are not located between Whale Creek and the Atlantic Ocean and/or Strathmere Bay and the Atlantic Ocean; and

iv. Lower Township, Cape May County: Those portions of this municipality which are not between Lower Thorofare and the Atlantic Ocean and/or Jarvis Sound and the Atlantic Ocean;

2. The department shall reduce the parking requirement for developments restricted to senior citizen housing that is, restricted to persons at least 62 years of age or those persons meeting the definition of "senior citizen tenant" pursuant to the Senior Citizens and Disabled Protected Tenancy Act, N.J.S.A. 2A:18-61, upon documentation that the parking needs of the development are less than two spaces per unit; or

3. Nursing homes and assisted living facilities are excluded from the parking requirement at (e) above.

(f) Rationale: See the note at the beginning of this Chapter.

**7:7E-8.15 (Reserved)**

**7:7E-8.16 (Reserved)**

**7:7E-8.17 (Reserved)**

**7:7E-8.18 (Reserved)**

**7:7E-8.19 (Reserved)**

**7:7E-8.20 (Reserved)**



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#### **7:7E-8.21 Subsurface sewage disposal systems**

(a) Subsurface sewage disposal system means a system for disposal of sanitary sewage into the ground which is designed and constructed to treat sanitary sewage in a manner that will retain most of the settleable solids in a septic tank and to discharge the liquid effluent to a disposal field.

(b) Acceptability conditions for subsurface sewage disposal systems are as follows:

1. Construction of the subsurface sewage disposal system is acceptable provided it meets all the provisions of the standards for Individual Subsurface Sewage Disposal Systems (N.J.A.C. 7:9A) and receives approval from the appropriate administrative authority;

2. For areas subject to tidal flooding, the bottom elevation of the disposal bed must be at or above the 10 year flood elevation as determined by the Federal Emergency Management Agency Flood Insurance Study Reports;

3. Construction of subsurface sewage disposal systems must comply with all applicable standards of the National Flood Insurance Program Regulations (44 CFR 60) prepared by the Federal Emergency Management Agency (FEMA).

(c) Rationale: See the note at the beginning of this Chapter.

#### **7:7E-8.22 Solid and hazardous waste**

(a) Solid waste means any garbage, refuse, sludge or other waste material, including solid, liquid, semi-solid or contained gaseous material. A material is a solid waste if it is "disposed of" by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters. Solid waste becomes a hazardous waste when it exhibits any of the characteristics which are specified in the Federal Regulations on Identification and Listing of Hazardous Waste (40 C.F.R. 261). The general characteristics of hazardous waste include, but are not limited to, characteristics of ignitibility, characteristics of corrosivity, characteristics of reactivity and characteristics of toxicity.

1. Solid waste shall not include the following:

i. Source separated food waste collected by livestock producers approved by the State's Department of Agriculture who collect, prepare and feed such wastes to livestock on their own farms, or recyclable materials that are exempt from regulation pursuant to N.J.A.C. 7:26A;

ii. Materials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26;

iii. Spent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year;

(b) Coastal development shall conform with all applicable State and Federal regulations, standards and guidelines for the handling and disposal of solid and hazardous wastes, including the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Solid Waste Management rules, N.J.A.C. 7:26, the Recycling rules, N.J.A.C. 7:26A, and the Hazardous Waste rules, N.J.A.C. 7:26G.

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(c) Rationale: See the note at the beginning of this Chapter.

## **APPENDIX 2**

### **BOUNDARIES OF COASTAL CENTERS IN THE CAFRA AREA NOT LOCATED ON BARRIER ISLANDS, OCEANFRONT SPITS, OR PENINSULAS**

For purposes of N.J.A.C. 7:7E-5 and 5B, this appendix sets forth the boundaries of coastal centers in the CAFRA area other than those on the barrier islands, oceanfront spits, or peninsulas (the boundaries of which are set forth in Appendix 3).

In accordance with N.J.A.C. 7:7E-5.3(c), the impervious cover allowed on a site within a Department-delineated coastal center must be placed on the net land area of the site, as determined under N.J.A.C. 7:7E-5.3(d). The placement of impervious cover on a site in a coastal center may be further restricted by other provisions of this chapter, including the Special Area rules at N.J.A.C. 7:7E-3.

The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the coastal centers are listed alphabetically.

Maps of the coastal centers, for illustration only, may be reviewed at the Department, 401 East State Street, Trenton, New Jersey, (609) 292-1143. In case of any discrepancy between the maps and this text, this text shall govern. Note: When a point is described as being a certain distance from a particular street or railroad right-of-way, that distance is measured from the centerline of the right-of-way of such street or railroad. Coastal wetlands maps referenced are listed at N.J.A.C. 7:7-2.2(c) and are available from the Department at the Maps and Publications office, 428 East State Street, PO Box 438, Trenton, New Jersey, (609) 777-1308.

#### **I. Atlantic County coastal centers**

##### **A. Corbin City coastal hamlet**

1. The coastal hamlet boundary extends from the southern intersection of State route 50 and Main Street (County route 611), thence a perpendicular distance of 500 feet east from State route 50, thence north along a line that is parallel to and 500 feet east of State route 50 to a point that is a perpendicular distance of 500 feet east of State route 50 at its intersection with Carl Road, thence west along that perpendicular line to State route 50, thence west on Carl Road to a point that is a perpendicular distance of 500 feet west of State route 50, thence south along a line that is parallel to and 500 feet west of State route 50 to Aetna Road, thence east on Aetna Road to Main Street (County route 611), and thence south on Main Street (County route 611) to State route 50.

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**B. Egg Harbor Township coastal centers**

**1. Egg Harbor coastal town**

a. The coastal town boundary extends from the intersection of English Creek Avenue and Schoolhouse Lane, thence south on Schoolhouse Lane to Mays Landinomers Point Road (County route 559), thence southeast on Mays Landinomers Point Road (County route 559) to Steelmanville Road (County route 651), thence east on Steelmanville Road (County route 651) to Robert Best Road, thence northeast on Robert Best Road to a point that is a perpendicular distance of 2,000 feet west of Ocean Heights Avenue, thence south along a line that is parallel to and 2,000 feet west of Ocean Heights Avenue to Steelmanville Road (County route 651), thence west on Steelmanville Road (County route 651) to a point that is a perpendicular distance of 3,000 feet west of Ocean Heights Avenue, thence south along a line that is parallel to and 3,000 feet west of Ocean Heights Avenue to the Garden State Parkway, thence northeast on the Garden State Parkway to Ocean Heights Avenue, thence northwest on Ocean Heights Avenue to a point that is a perpendicular distance of 2,000 feet north of English Creek Avenue, thence west along a line that is parallel to and 2,000 feet north of English Creek Avenue to Evergreen Avenue, thence south on Evergreen Avenue to English Creek Avenue, and thence west on English Creek Avenue to Schoolhouse Lane

**2. West Atlantic City coastal town**

a. The coastal town boundary extends around that part of Egg Harbor Township that is (1) west of Atlantic City and north of Lakes Bay and (2) designated as Planning Area 5, but excludes any bay islands.

**C. Estell Manor coastal hamlet**

1. The coastal hamlet boundary circumscribes an area that extends a perpendicular distance of 300 feet east of State route 50 between a point on State route 50 that is 1,000 feet south of Tuckahoe Road and a point on State route 50 that is 1,000 feet north of Tuckahoe Road.

**D. Galloway Township coastal centers**

**1. Conovertown coastal village**

a. The coastal village boundary extends from the intersection of Davis Avenue and the Absecon/Galloway Township municipal boundary, thence east along the municipal boundary to a point that is a perpendicular distance of 300 feet east of US route 9, thence north along a line that is parallel to and 300 feet east of US route 9 to Brown Avenue, thence east on Brown Avenue to a point that is a perpendicular distance of 1,500 feet east of US route 9, thence north along a line that is parallel to and 1,500 feet east of US route 9 to Bartlett Avenue, thence west on Bartlett Avenue to a point that is a perpendicular distance of 300 feet west of US route 9, thence south along a line that is parallel to and 300 feet west of US route 9 to Pennsylvania Avenue, thence west on Pennsylvania Avenue to Marshall Avenue, thence south on Marshall Avenue to a point that is a perpendicular distance of 200 feet north of Brook Avenue, thence west along a line that is parallel to and 200 feet north of Brook

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Avenue to Seaview Avenue, thence south and southeast on Seaview Avenue to Davis Avenue, and thence south on Davis Avenue to the municipal boundary.

## **E. Hamilton Township coastal centers**

### **1. Clarkstown coastal hamlet**

a. The coastal hamlet boundary extends from the intersection of Gravelly Run Road and Mays Landing-Somers Point Road (County route 559), thence west on Gravelly Run Road to Clarkstown Road, thence northwest and north on Clarkstown Road to Old River Road, thence southeast on Old River Road to Mays Landing-Somers Point Road (County route 559), and thence southeast on Mays Landing-Somers Point Road (County route 559) to Gravelly Run Road.

## **F. Port Republic City coastal centers**

### **1. Chestnut Neck coastal hamlet**

a. The coastal hamlet boundary extends from the intersection of the Garden State Parkway and US route 9, thence south on the Garden State Parkway to a point that is 3,000 feet south of the intersection of the Garden State Parkway and US route 9, thence southeast along a line that is perpendicular to the Garden State Parkway to Old New York Road (Chestnut Neck Road), thence northeast on Old New York Road (Chestnut Neck Road) to a point that is 1,400 feet north of the intersection of Old New York Road (Chestnut Neck Road) and US route 9, thence due west to US route 9, and thence north on US route 9 to the Garden State Parkway.

### **2. Port Republic coastal village**

a. The coastal village boundary extends from the intersection of Old New York Road (County route 575) and Adams Avenue, thence west on Adams Avenue to Clarks Landing Road (County route 624), thence northwest on Clarks Landing Road (County route 624) to the Garden State Parkway, thence west on the Garden State Parkway to a point that is a perpendicular distance of 800 feet west of Mill Road, thence south along a line that is parallel to and 800 feet west of Mill Road to Pomona Road, thence west on Pomona Road to Main Street, thence east on Main Street to Old New York Road (County route 575), and thence north on Old New York Road (County route 575) to Adams Avenue.

## **G. Weymouth Township coastal centers**

### **1. Belcville coastal village**

a. The coastal village boundary extends from the intersection of State route 50 and Grace Avenue, thence northeast on Grace Avenue to Madden Avenue, thence north on Madden Avenue to Lafayette Street, thence east on Lafayette Street to Grace Avenue, thence east on the same bearing to a point that is a perpendicular distance of 1,200 feet east of State route 50, thence north along a line that is parallel to and 1,200 feet east of State route 50 to Danenhaver Lane, thence west on Danenhaver Lane to State route 50, and thence south on State route 50 to Grace Avenue.

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## **II. Burlington County coastal centers**

### **A. Bass River coastal village**

1. The coastal village boundary circumscribes an area that extends a perpendicular distance of 200 feet on either side of US route 9 between the Garden State Parkway and a point on US route 9 that is 2,000 feet east of the Garden State Parkway.

## **III. Cape May County coastal centers**

### **A. Dennis Township coastal centers**

#### **1. Clermont coastal hamlet**

a. The coastal hamlet boundary extends from a point on the Dennis Township/Middle Township municipal boundary that is 700 feet west of US route 9, thence east along the border to the Garden State Parkway, thence north along the Garden State Parkway to a point due east of the southernmost intersection of US route 9 and Radcliffe Avenue (State Highway 83), thence west to the intersection of US route 9 and Radcliffe Avenue (State Highway 83), thence northeast along US route 9 to a point 1,700 feet from the intersection of US route 9 and Radcliffe Avenue (State Highway 83), thence due west to Radcliffe Avenue (State Highway 83), and thence southwest along a line that is parallel to US route 9 to the municipal boundary.

#### **2. Dennisville coastal village**

a. The coastal village boundary extends from the intersection of State Highway 47 and Main Street north along Main Street to a point 400 feet south of Gatzmer Road, thence northeast along a line that is parallel to and 400 feet from Gatzmer Road to the Penn Central Reading Seashore railroad right of way, thence northeast along the railroad right of way to a point that is 400 feet south of Dennisville Road (County route 610), thence east along a line that is parallel to and 400 feet south of Dennisville Road (County route 610) to a point that is 400 feet west of the unnamed road leading to the Dennis Township municipal building, thence south along a line that is parallel to and 400 feet west of the unnamed road to a point that is 1,200 feet from Dennisville Road (County route 610), thence east along a line parallel to and 1,200 feet from Dennisville Road (County route 610) to a point that is 400 feet east of the unnamed road, thence north along a line that is parallel to and 400 feet east of the unnamed road to Dennisville Road (County route 610), thence west along Dennisville Road (County route 610) to State Highway 47, thence west a perpendicular distance of 400 feet from State Highway 47, thence southeast along a line that is parallel to and 400 feet west of State Highway 47 to a point 400 feet due west of the intersection of State Highway 47 and Main Street, and thence east to the intersection of State Highway 47 and Main Street.

#### **3. Eldora coastal hamlet**

a. The coastal hamlet boundary extends from the intersection of Stipson's Island Road and Schoolhouse Lane, thence east on Schoolhouse Lane to a point 200 feet west of State route 47, thence southeast for a distance of 800 feet along a line parallel to and 200 feet west of State route 47, thence northeast along a line perpendicular to State route 47 to State route 47, thence northwest on State route 47 to a point 800 feet west of the intersection of State route 47 and Stipson's Island Road, thence a

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perpendicular distance of 200 feet south from State route 47, thence east along a line parallel to and 200 feet south of State route 47 to Stipson's Island Road, and thence south on Stipson's Island Road to Schoolhouse Lane.

#### **4. Oceanview coastal hamlet**

a. The coastal hamlet boundary extends from a point that is a perpendicular distance of 400 feet west of the point on US route 9 that is 400 feet south of the intersection of US route 9 and Sea Isle Boulevard, thence southeast along a line that is parallel to and 400 feet south of Sea Isle Boulevard to the Garden State Parkway, thence north on the Garden State Parkway to a point that is due east of the intersection of US route 9 and Woodbine Oceanview Road (County route 550), thence west to the intersection of US route 9 and Woodbine Oceanview Road (County route 550), thence west 400 feet on Woodbine Oceanview Road (County route 550), and thence south along a line that is parallel to and 400 feet west of US route 9 to a point that is a perpendicular distance of 400 feet west of the point on US route 9 that is 400 feet south of the intersection of US route 9 and Sea Isle Boulevard.

#### **5. South Dennis coastal village**

a. The coastal village boundary extends from the intersection of Court House-Dennisville Road (County route 657) and Gravel Hole Road, thence east on Gravel Hole Road to the New Jersey Transit railroad right of way, thence north along the railroad right of way to a point 200 feet south of Schoolhouse Lane (South Dennis-South Seaville Road), thence east along a line parallel to and 200 feet south Schoolhouse Lane (South Dennis-South Seaville Road) to State route 83, thence southeast on State route 83 to Village Lane, thence north a perpendicular distance of 500 feet from State route 83, thence northwest along a line that is parallel to and 500 feet north of State route 83 to a point that is a perpendicular distance of 500 feet northeast of a point on State route 83 that is 800 feet northwest of the intersection of State route 83 and Schoolhouse Lane (South Dennis-South Seaville Road), thence southwest along that perpendicular line to State route 83, thence northwest on State route 83 to the southernmost point of the intersection of State route 83 and State route 47, thence west to a point that is a perpendicular distance of 500 feet west from State route 47, thence south along a line that is parallel to and 500 feet west of State route 47 to a point that is a perpendicular distance of 500 feet northwest of State route 47 at its intersection with Court House-Dennisville Road (County route 657), thence southeast along a line that is parallel to and 500 feet west of Court House-Dennisville Road (County route 657) to a point that is a perpendicular distance of 500 feet west of Court House-Dennisville Road (County route 657) at its intersection with Gravel Hole Road, and thence northeast along that perpendicular line to the intersection of Court House-South Dennis Road (County route 657) and Gravel Hole Road.

#### **6. South Seaville coastal hamlet**

a. The coastal hamlet extends from the intersection of Clermont-South Seaville Road (County route 608) and Furlong Drive, thence east on Furlong Drive to a point that is a perpendicular distance of 500 feet east of Clermont-South Seaville Road (County route 608), thence north along a line parallel to and 500 feet east of

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Clermont-South Seaville Road (County route 608) to a point 500 feet south of Main Street, thence east along a line parallel to and 500 feet south of Main Street to Maple Avenue, thence north on Maple Avenue to its end and continuing on the same bearing to a point 500 feet north of Main Street, thence west along a line parallel to and 500 feet north of Main Street to Old Goshen Road, thence northeast on Old Goshen Road to its end, thence northwest along a line perpendicular to Corsons Tavern Road to a point 300 feet northwest of Corsons Tavern Road, thence southwest along a line parallel to and 300 feet from Corsons Tavern Road to a point 500 feet north of Main Street, thence west along a line parallel to and 500 feet north of Main Street to a point 500 feet west of Woodbine Boulevard, thence south along a line parallel to and 500 feet west of Woodbine Boulevard to a point that is due west of the intersection of Clermont-South Seaville Road (County route 608) and Furlong Drive, and thence due east to the intersection of Clermont-South Seaville Road (County route 608) and Furlong Drive.

## **B. Lower Township coastal centers**

### **1. Schellenger's Landing coastal town**

a. The coastal town boundary circumscribes the island known as Schellenger's Landing, which is bordered by the Cape May Canal, Spicer Creek, Cape Island Creek and Cape May Harbor, but excludes any area seaward of the mean high water line.

### **2. Town Bank/North Cape May coastal town**

a. The coastal town boundary extends from the intersection of Shore Drive and Pinewood Road, thence east on Pinewood Road to Clubhouse Drive, thence south on Clubhouse Drive to Fernwood Road, thence east on Fernwood Road to Norwood Road, thence south on Norwood Road to Brookdale Road, thence west on Brookdale Road to Clubhouse Drive, thence south on Clubhouse Drive to Delair, thence east on Delair to Oxford, thence south on Oxford to Racetrack, thence south on Racetrack to Town Bank Road, thence southeast on Town Bank Road to Beachhurst Drive, thence north on Beachhurst Drive to Clearwater Drive, thence north on Clearwater Drive to Linda Anne Drive, thence east on Linda Anne Drive to Margaret Drive, thence north on Margaret Drive to Heidi Drive, thence east on Heidi Drive to Bayshore Road (County route 603), thence southwest on Bayshore Road (County route 603) to Fire Lane, thence southeast on Fire Lane to Apple Blossom Drive, thence east on Apple Blossom Drive to Sunnyside Drive, thence south on Sunnyside Drive to a point 200 feet north of Town Bank Road, thence southeast along a line parallel to and 200 feet north of Town Bank Road to Shunpike Road, thence south on Shunpike Road to US route 9, thence west on US route 9 to Adriatic Road, thence south on the same bearing as Adriatic Road to the mean high water line of the Cape May Canal, thence west along the mean high water line to Beach Drive, thence north on Beach Drive, which becomes Shore Drive, and thence north on Shore Drive to Pinewood Road.

### **3. Villas coastal village**

a. The coastal village boundary extends from a point 300 feet north of the intersection of Delaware Avenue and Miami Avenue, thence southeast along a line parallel to and 300 feet north of Miami Avenue to a point 300 feet north of the

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intersection of Miami Avenue and Peters Road, thence south to the intersection of Miami Avenue and Peters Road, thence southeast a perpendicular distance of 500 feet, thence south along a line parallel to and 500 feet east of Peters Road to Tampa Avenue, thence southeast on Tampa Avenue to Pensacola Road, which becomes Princeton Street, thence south on Princeton Street to Bates Avenue, thence west on Bates Avenue to Harvard Avenue, thence south on Harvard Avenue to Caroline Avenue, thence east on Caroline Avenue to Star Avenue, thence south on Star Avenue to Fulling Mill Road, thence west on Fulling Mill road to Bayshore Road, thence south on Bayshore Road to McKinley Road, thence west on McKinley Road to Weaver Avenue, thence south on Weaver Avenue to Edna Avenue, thence west on Edna Avenue to Fourth Avenue, thence southwest on Fourth Avenue to Bybrook Drive, thence southeast on Bybrook Drive to Baywyn Road, thence west on Baywyn Road to Clubhouse Drive, thence south on Clubhouse Drive to Mallow Road, thence west on Mallow Road to Shore Drive, thence north on Shore Drive to Fern Road, thence east on Fern Road to Shore Drive, thence north on Shore Drive to Delview Road, thence east on Delview Road to Bay Drive, thence north on Bay Drive to Wildwood Avenue, then northeast along a straight line to the intersection of Arbor Road and Delaware Bay Drive, thence north on Delaware Bay Drive to Birch Road, thence north along a straight line to the intersection of Cloverdale Avenue and Beach Avenue, thence north on Beach Avenue to Evergreen Avenue, thence north along a straight line to the intersection of Spruce Avenue and Delaware Avenue, thence north on Delaware Avenue to Maryland Avenue, thence west on Maryland Avenue to Delaware Bay Drive, thence north on Delaware Bay Drive, which becomes Millman Lane, thence north on Millman Lane, which becomes Delaware Avenue, and thence north on Delaware Avenue to a point 300 feet north of Miami Avenue.

## **C. Middle Township coastal centers**

### **1. Cape May Court House coastal regional center**

a. The coastal regional center boundary extends from a point along the Garden State Parkway 200 feet north of the intersection of Crest Haven Road, thence northwest along a line perpendicular to the Garden State Parkway and parallel to Crest Haven Road to a point on the Conectiv Transmission Line right-of-way 1,500 feet north of the intersection of said right-of-way with Dennisville-Courthouse Road (county Route 657), thence southwest along the Conectiv Transmission Line right-of-way to County Route 657 Court House-Dennisville Road, thence 810 feet north along County Route 657 Court House-Dennisville Road, thence northwest to a point in the right-of-way of the Cape May Seashore Railroad Line 4,500 feet north of the intersection of said railroad right-of-way with the Conectiv Transmission Line right-of-way, thence south along the right-of-way of the Cape May Seashore Railroad Line to a point at the intersection of Church Street, thence west on Church Street to County Route 615 (Goshen Road), thence north on Goshen Road to the Conectiv Transmission Line, thence southwest along the Conectiv Transmission Line to a point that is due west of the intersection of Pacific Avenue and Shunpike Road, thence east to the intersection of Pacific Avenue and Shunpike Road, thence east on Pacific Avenue to the railroad right-of-way, thence south along the railroad right of way to a point 2,000 feet south of Oyster Road, thence due east to the Garden State Parkway,



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and thence northeast on the Garden State Parkway to First Avenue, thence east on First Avenue to a point that is a perpendicular distance of 2,000 feet east of the Garden State Parkway, thence north along a line that is parallel to and 2,000 feet east of the Garden State parkway to a point that is a perpendicular distance of 500 feet north of Stone Harbor Boulevard, thence west along a line that is parallel to and 500 feet north of Stone Harbor Boulevard to the Garden State Parkway, and thence northeast along the Garden State Parkway to a point 800 feet south of the intersection of Crest Haven Road, thence east perpendicular to the Garden State Parkway to a point intersecting the upper wetlands boundary depicted on Coastal Wetland Map091-1956, thence along the upper wetlands boundary depicted on maps 091-1962 and 098-1962 approximately 9,800 feet to a point, thence west along a perpendicular line that intersects the Garden State Parkway at a point 5,230 feet northeast of the intersection of Crest Haven, thence southwest along the Garden State Parkway to a point 200 feet north of the intersection of Crest Haven Road and the Garden State Parkway.

## **2. Del Haven coastal village**

a. The coastal village boundary extends from the intersection of Delaware Avenue and Millman Boulevard, thence southwest on Delaware Avenue to Roosevelt Boulevard, thence southeast on Roosevelt Boulevard to 7th Street, thence southwest on 7th Street to a point 400 feet southwest of Roosevelt Boulevard, thence southeast along a line parallel to and 400 feet southwest of Roosevelt Boulevard to a point that is a perpendicular distance of 200 feet northwest of Bayshore Road (County route 603), thence southwest along a line that is parallel to and 200 feet northwest of Bayshore Road (County route 603) to a point that is a perpendicular distance of 200 feet north of Eldredge Avenue, thence west for a distance of 2,000 feet along a line that is parallel to and 200 feet north of Eldredge Avenue, thence due south to Eldredge Avenue, thence west on Eldredge Avenue to Delaware Avenue, thence south on Delaware Avenue to Sun Ray Beach Road, thence east on Sun Ray Beach Road to Oak Road, thence south on Oak Road to its end and then along the same bearing to a point 100 feet south of Rutledge Avenue, thence east along a line parallel to and 100 feet south of Rutledge Avenue to Bayshore Road, thence northeast on Bayshore Road to Lafayette Avenue, thence southeast on Lafayette Avenue to 15th Street, thence northeast on 15th Street to Norburys Landing Road (County route 642), thence northwest on Norburys Landing Road (County route 642) to 16th Street, thence northeast on 16th Street to its end, then along the same bearing to a point 800 feet northeast of Millman Boulevard, thence northwest along a line that is parallel to and 800 feet northeast of Millman Boulevard to a point that is northeast from the end of, and on the same bearing as, 7th Street, thence southwest along that bearing to 7th Street, thence southwest on 7th Street to Millman Boulevard, and thence northwest on Millman Boulevard to Delaware Avenue.

## **3. Goshen coastal hamlet**

a. The coastal hamlet boundary extends from the intersection of State route 47 and William Street, thence south on State route 47 to a point that is a perpendicular distance of 300 feet south of William Street, thence east along a line that is parallel to

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and 300 feet south of William Street to Goshen Road, thence north on Goshen Road to William Street, thence east on the same bearing as William Street for a distance of 300 feet, thence northwest along a line parallel to and 300 feet first from Goshen Road, then Goshewainton Road, and then State route 47, to a point that is 300 feet east of a point on State route 47 that is 1,000 feet north of the intersection of State route 47 and Goshen Landing Road, thence west along a line that is perpendicular to State route 47 to a point that is 300 feet west of State route 47, thence south along a line that is parallel to and 300 feet west of State route 47 to a point that is 300 feet west of the intersection of State route 47 and William Street, and thence east to the intersection of State route 47 and William Street.

#### **4. Green Creek coastal hamlet**

a. The coastal hamlet boundary extends from the intersection of Linda Lane and Paula Lane, thence northeast on Paula Lane to a point that is a perpendicular distance of 600 feet east of State route 47, thence northwest along a line that is parallel to and 600 feet east of State route 47 to Burleigh Road, thence northwest on Burleigh Road to a point that is a perpendicular distance of 400 feet east of State route 47, thence north along a line that is parallel to and 400 feet east of State route 47 to Lomurno Lane, thence west on Lomurno Lane to State route 47, thence west along the same bearing to a point that is a perpendicular distance of 400 feet west of State route 47, thence south along a line that is parallel to and 400 feet west of State route 47 to Linda Lane, and thence south on Linda Lane to Paula Lane.

#### **5. Rio Grande coastal regional center**

a. The coastal regional center boundary extends from the intersection of Rio Grande Avenue and US route 9, thence southeast on Rio Grande Avenue to 6th Street, thence north on 6th Street to State route 47, thence southeast on State route 47 to the Garden State Parkway, thence northeast on the Garden State Parkway to a point that is east of, and on the same bearing as, the southernmost west-east road in the Marlyn Manor Trailer Park (Maurice Street), thence northwest to Maurice Street, thence northwest on Maurice Street to its end, thence northwest along the same bearing to US route 9, thence northeast on US route 9 to a point that is east of, and on the same bearing as, Satt Road, thence west to Satt Road, thence northwest on Satt Road to Railroad Avenue, thence southwest on Railroad Avenue to Davis Road, thence northwest on Davis Road to Shunpike Road, thence southwest on Shunpike Road to State route 47, thence southeast on State route 47 to US route 9, and thence southwest on US route 9 to Rio Grande Avenue.

#### **6. Swainton coastal hamlet**

a. The coastal hamlet boundary extends from a point on Faith Run Road that is 500 feet west of US route 9, thence east on Faith Run Road to US route 9, thence east on the same bearing to a point that is 500 feet east of US route 9, thence northeast along a line that is parallel to and 500 feet east of US route 9 to a point 1,000 feet south of Avalon Boulevard, thence east along a line that is parallel to and 1,000 feet south of Avalon Boulevard to the Garden State Parkway, thence northeast on the Garden State Parkway to a point that is 1,000 feet north of Avalon Boulevard, thence

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northwest along a line that is parallel to and 1,000 feet north of Avalon Boulevard to the intersection of Brookridge Road and US route 9, thence northwest on Brookridge Road to a point 500 feet west of US route 9, and thence southwest along a line that is parallel to and 500 feet west of US route 9 to Faith Run Road.

## **7. Whitesboro/Burleigh coastal village**

a. The coastal village boundary extends from the intersection of US route 9 and Kings Avenue, thence a perpendicular distance of 1,000 feet southeast of US route 9, thence northeast along a line that is parallel to and 1,000 feet southeast of US route 9 to Lena Street, thence east on Lena Street to its end, and continuing on the same bearing to the Garden State Parkway, thence north on the Garden State Parkway to Wildwood Boulevard, thence west on Wildwood Boulevard to US route 9, thence northeast on US route 9 for 500 feet, thence northwest along a line that is parallel to and 500 feet north of Indian Trail (County route 618) to the Connectiv transmission line, thence southwest along the Connectiv transmission line to a point that is northwest from the end of, and on the same bearing as, Kings Avenue, thence southeast along that bearing to Kings Avenue, and thence southeast on Kings Avenue to US route 9.

## **D. Upper Township coastal centers**

### **1. Marmora/Beesley's Point/Palermo coastal town**

a. The coastal town boundary extends from the intersection of the New Jersey Transit railroad right of way and Butter Road (County route 637), thence southeast on Butter Road to US route 9, thence north on US route 9 to Sea Sounds Lane, thence east on Sea Sounds Lane to its end, and continuing on the same bearing to the Garden State Parkway, thence north on the Garden State Parkway to Harbor Road, thence west on Harbor Road to US route 9, thence west to a point that is a perpendicular distance of 400 feet west from US route 9, thence south along a line that is parallel to and 400 feet west of US route 9 to Heritage Drive, thence west on Heritage Drive to its end, thence due west to the Conectiv transmission line, thence south along the transmission line to Elmwood Avenue, thence east on Elmwood Avenue to County route 631, thence southwest on County route 631 to the New Jersey Transit railroad right of way, and thence southwest along the railroad right of way to Butter Road (County route 637).

### **2. Petersburg coastal village**

a. The coastal village boundary extends from the intersection of Perry Road and State route 50, thence east on State route 50 to the upper wetlands boundary, thence north along the upper wetlands boundary to a point that is on the same bearing as White Pine Lane, thence west along that bearing to the end of White Pine Lane, thence west on White Pine Lane to Petersburg Avenue (County route 610), thence north on Petersburg Avenue (County route 610) to Tuckahoe Marmora Road, thence east on Tuckahoe-Marmora Road to Tuckahoe Road (County route 631), thence west on Tuckahoe Road (County route 631) to State route 50, and thence southeast on State route 50 to Perry Road.

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### **3. Seaville coastal hamlet**

a. The coastal hamlet boundary extends from the intersection of Hope Corson Road and State route 50, thence due west to the Connectiv main transmission line, thence southwest along the transmission line to the Upper Township/Dennis Township boundary, thence southeast along the township boundary to the Garden State Parkway, thence northeast on the Garden State Parkway to Hope Corson Road, thence northwest on Hope Corson Road to State route 50.

### **4. Tuckahoe coastal hamlet**

a. The coastal hamlet boundary extends from the intersection of State route 50 and Budd Avenue, thence east on Budd Avenue to a point 500 feet east of State route 50, thence north along a line that is parallel to and 500 feet east of State route 50 to a point that is 200 feet south of Schoolhouse Lane, thence east for a distance of 500 feet along a line that is parallel to and 200 feet south of Schoolhouse Lane, thence north along a line that is perpendicular to Schoolhouse Lane to a point that is 200 feet north of Schoolhouse Lane, thence west along a line that is parallel to and 200 feet north of Schoolhouse Lane to a point that is 500 feet east of State route 50, thence north along a line that is parallel to and 500 feet east of State route 50 to Mosquito Landing Road, thence west on Mosquito Landing Road to State route 50, thence south on State route 50 to a point that is 500 feet north of State route 49, thence west along a line that is parallel to and 500 feet north of State route 49 to 2nd Avenue, thence south on 2nd Avenue to State route 49, thence east on State route 49 to State route 50, thence south on State route 50 to Budd Avenue.

## **E. West Cape May coastal town**

1. The coastal town boundary extends from a point on Sunset Boulevard that is 600 feet west of Broadway, thence south along a line parallel to and 600 feet west of Broadway to the municipal boundary, thence east along the municipal boundary to Broadway, thence north along Broadway to Perry Street, thence east on Perry Street to the West Cape May/Cape May City municipal boundary, thence north along the municipal boundary to a point 150 feet north of Myrtle Avenue, thence west along a line parallel to and 150 feet north of Myrtle Avenue to a point 150 feet east of Park Boulevard, thence north along a line parallel to and 150 feet east of Park Boulevard to a point 150 feet north of Leaming Avenue, thence west along a line parallel to and 150 feet north of Leaming Avenue to a point 400 feet east of Broadway, thence north along a line parallel to and 400 feet east of Broadway to a point that is a perpendicular distance of 100 feet north of Central Avenue, thence west along a line a perpendicular distance of 100 feet north of Central Avenue to a point 400 feet west of Broadway, thence south along a line that is parallel to and 400 feet west of Broadway to Sixth Avenue, thence west on Sixth Avenue to State Street, thence south on State Street to Fifth Avenue, thence east on Fifth Avenue to Green Street, thence south on Green Street to Fourth Avenue, thence east on Fourth Avenue to Columbia Avenue, thence south on Columbia Avenue to Third Avenue, thence west on Third Avenue to Morrison Avenue, thence south on Morrison Avenue to Sunset Boulevard, and thence east on Sunset Boulevard to a point 600 feet west of Broadway.

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#### **IV. Cumberland County coastal centers**

##### **A. Downe Township coastal centers**

###### **1. Dividing Creek coastal village**

a. The coastal village boundary extends from the intersection of Campbell Street and Main Street (County route 553), thence southeast on Main Street (County route 553) to Union Street, thence northeast on Union Street to the point at which it changes direction, thence north along the same bearing to a point 200 feet northwest of the point at which Union Street changes direction, thence northwest along a line parallel to and 200 feet northwest of Union Street to a point that is a perpendicular distance of 200 feet northwest of Church Street, thence southwest along a line that is parallel to and 200 feet northwest of Church Street to a point that is a perpendicular distance of 200 feet north of Hickman Avenue, thence west along a line that is parallel to and 200 feet north of Hickman Avenue to a point that is a perpendicular distance of 200 feet north of Hickman Avenue at its intersection with Campbell Street, thence south to the intersection of Hickman Avenue and Campbell Street, thence southwest a perpendicular distance of 200 feet from Campbell Street, thence southeast along a line that is parallel to and 200 feet southwest of Campbell Street to a point that is a perpendicular distance of 200 feet southwest of the point at which Campbell Street changes direction, thence northeast to the point at which Campbell Street changes direction, and thence northeast on Campbell Street to Main Street (County route 553).

###### **2. Fortescue coastal village**

a. The coastal village boundary extends from a point on Delaware Avenue that is 800 feet south of the intersection of Delaware Avenue and Downe Avenue, thence east a perpendicular distance of 700 feet, thence north along a line that is parallel to and 700 feet east of Delaware Avenue to Downe Avenue, thence east and north on Downe Avenue to Creek Road, thence west and northwest on Creek Road to River Road, thence west on River Road to Delaware Avenue, and thence south on Delaware Avenue to Downe Avenue.

###### **3. Newport coastal village**

a. The coastal village boundary extends from a point on Fortescue Road that is 500 feet south of the intersection of Hall Street and Fortescue Road, thence northeast along a line that is parallel to and 500 feet south and east of Hall Street to a point that is a perpendicular distance of 200 feet south of Methodist Road, thence southeast along a line that is parallel to and 200 feet south of Methodist Road to a point that is 1,800 feet southeast of the intersection of Methodist Road and Mill Road, thence northeast along a line to a point that is a perpendicular distance of 200 feet north of Methodist Road, thence northwest along a line that is parallel to and 200 feet north of Methodist Road to a point that is a perpendicular distance of 200 feet east of Mill Road, thence north along a line that is parallel to and 200 feet east of Mill Road to a point that is a perpendicular distance of 100 feet north of County route 656, thence southwest along a line that is parallel to and 100 feet north of Main Street (County route 656) to a point that is a perpendicular distance of 100 feet north of a point on Main Street (County route 656) that is 1,000 feet southwest of its intersection with

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Fortescue Road, thence south along a line that is perpendicular to Main Street (County route 656) to a point that is 100 feet south of Main Street (County route 656), thence northeast along a line that is parallel to and 100 feet south of County route 656 (Main Street) to a point that is 200 feet west of Fortescue Road, and thence south along a line that is parallel to and 200 feet west of Fortescue Road to a point that is a perpendicular distance of 200 feet west of a point on Fortescue Road that is 500 feet south of its intersection with Hall Street.

## **B. Fairfield Township coastal centers**

### **1. Fairton coastal village**

a. The boundary for the southern part of the coastal village extends from a point on Rockville Road that is 1,400 feet west of the intersection of Rockville Road and Cedarville Road, thence south a perpendicular distance of 200 feet, thence east along a line that is parallel to and 200 feet south of Rockville Road to a point that is a perpendicular distance of 200 feet west of Cedarville Road, thence south along a line that is parallel to and 200 feet west of Cedarville Road to a point that is a perpendicular distance of 200 feet west of a point on Cedarville Road that is 2,000 feet south of its intersection with Rockville Road, thence east along a line that is perpendicular to Cedarville Road to a point that is 200 feet east of Cedarville Road, thence north along a line that is parallel to and 200 feet east of Cedarville Road to a point that is due west of the intersection of Lummis Mill Road and the former Central Railroad of New Jersey right-of-way, thence due east to of the intersection of Lummis Mill Road and the former Central Railroad of New Jersey right-of-way, thence northeast along the railroad right-of-way to a point that is a perpendicular distance of 300 feet north of Main Street (County route 698), thence southwest along a line that is parallel to and 300 feet north of Main Street (County route 698) to a point that is a perpendicular distance of 200 feet east of Cohansey River Drive, thence north along a line that is parallel to and 200 feet east of Cohansey River Drive to a point that is 900 feet north of Main Street (County route 698), thence west along a line that is perpendicular to Cohansey River Drive to a point that is 200 feet west of Cohansey River Drive, thence south along a line that is parallel to and 200 feet west of Cohansey River Drive to Main Street (County route 698), thence west on Main Street (County route 698) to a point that is 200 feet west of Noble Avenue, thence south along a line that is parallel to and 200 feet west of Noble Avenue to a point that is a perpendicular distance of 200 feet north of Rockville Road, thence west along a line that is parallel to and 200 feet north of Rockville Road to a point that is a perpendicular distance of 200 feet north of a point on Rockville Road that is 1,400 feet west of its intersection with Cedarville Road, and thence south to Rockville Road.

b. The boundary for the northern part of the coastal village extends from a point on Bridgeton-Fairton Road that is 1,000 feet south of its intersection with Fairton-Gouldtown Road (County route 553), thence east a perpendicular distance of 200 feet, thence north along a line that is parallel to and 200 feet east of Bridgeton-Fairton Road to a point that is a perpendicular distance of 200 feet south of Fairton-Gouldtown Road (County route 553), thence northeast along a line that is parallel to

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and 200 feet south of Fairton-Gouldtown Road (County route 553) to a point that is 200 feet southeast of a point on Fairton-Gouldtown Road (County route 553) that is 1,000 feet northeast of its intersection with Bridgeton-Fairton Road, thence north along a line that is perpendicular to Fairton-Gouldtown Road (County route 553) to a point that is a perpendicular distance of 200 feet northwest of Fairton-Gouldtown Road (County route 553), thence southwest along a line that is parallel to and 200 feet north of Fairton-Gouldtown Road (County route 553) to a point that is a perpendicular distance of 200 feet east of Bridgeton-Fairton Road, thence north along a line that is parallel to and 200 feet east of Bridgeton-Fairton Road to a point that is a perpendicular distance of 200 feet east of a point on Bridgeton-Fairton Road that is 1,000 feet north of its intersection with Fairton-Gouldtown Road (County route 553), thence west along a line that is perpendicular to Bridgeton-Fairton Road to a point that is 200 feet west of Bridgeton-Fairton Road, thence south along a line that is parallel to and 200 feet west of Bridgeton-Fairton Road to a point that is a perpendicular distance of 200 feet west of a point on Bridgeton-Fairton Road that is 1,000 feet south of its intersection with Fairton-Gouldtown Road (County route 553), and thence east a perpendicular distance of 200 feet to Bridgeton-Fairton Road.

## **C. Greenwich Township coastal centers**

### **1. Greenwich coastal village**

a. The coastal village boundary extends from a point on Market Lane that is 1,600 feet west of the intersection of Market Lane and Main Street, thence a perpendicular distance of 300 feet south from Market Lane, thence east along a line that is parallel to and 300 feet south of Market Lane to a point that is a perpendicular distance of 500 feet west of Main Street, thence south along a line that is parallel to and 500 feet west of Main Street to a point that is west of the southern end of Main Street, thence east along a line that is perpendicular to Main Street to a point that is 500 feet east of the southern end of Main Street, thence north along a line that is parallel to and 500 feet east of Main Street to a point that is a perpendicular distance of 200 feet south of Greenwich Road, thence east along a line that is parallel to and 200 feet south of Greenwich Road to a point that is 2,000 feet east of the intersection of Greenwich Road and Main Street, thence north along a line that is perpendicular to Greenwich Road to a point that is a perpendicular distance of 500 feet north of Greenwich Road, thence west a line that is parallel to and 500 feet north of Greenwich Road to a point that is a perpendicular distance of 500 feet east of Main Street, thence north along a line that is parallel to and 500 feet east of Main Street to a point that is 500 feet east of a point on Main Street that is 1,500 feet north of the intersection of Main Street and Bacon's Neck Road, thence west along a line that is perpendicular to Main Street to a point that is a perpendicular distance of 500 feet west of Main Street, thence south along a line that is parallel to and 500 feet west of Main Street to a point that is a perpendicular distance of 300 feet north of Bacon's Neck Road, thence west along a line that is parallel to and 300 feet north of Bacon's Neck Road to a point that is 1,600 feet west of Main Street, thence south along a line that is perpendicular to Bacon's Neck Road to a point that is a perpendicular distance of 300 feet south of Bacon's Neck Road, thence east along a line that is parallel to and 300 feet south of Bacon's Neck Road to a point that is a perpendicular distance of 500 feet west of Main Street,

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thence south along a line that is parallel to and 500 feet west of Main Street to a point that is a perpendicular distance of 300 feet north of Market Lane, thence west along a line that is parallel to and 300 feet north of Market Lane to a point that is 1,600 feet from Main Street, and thence south along a perpendicular line to Market Lane.

## **2. Othello coastal hamlet**

a. The coastal hamlet boundary extends from a point on Ye Greate Street (County route 623) that is 1,200 feet south of the intersection of Ye Greate Street (County route 623) and Springtown Road (County route 620), thence east from Ye Greate Street (County route 623) a perpendicular distance of 200 feet, thence north along a line that is parallel to and 200 feet east of Ye Greate Street (County route 623) to a point that is a perpendicular distance of 200 feet south of Springtown Road (County route 620), thence east along a line that is parallel to and 200 feet south of Springtown Road (County route 620) to a point that is 800 feet east of Ye Greate Street (County route 623), thence north along a line that is perpendicular to Springtown Road (County route 620) to a point that is a perpendicular distance of 200 feet north of Springtown Road (County route 620), thence west along a line that is parallel to and 200 feet north of Springtown Road (County route 620) to a point that is a perpendicular distance of 200 feet east of Ye Greate Street (County route 623), thence north along a line that is parallel to and 200 feet east of Ye Greate Street (County route 623) to a point that is a perpendicular distance of 200 feet southeast of Upper Roadstown Road, thence northeast along a line that is parallel to and 200 feet southeast of Upper Roadstown Road a distance of 600 feet, thence northwest along a line that is perpendicular to Upper Roadstown Road to a point that is a perpendicular distance of 200 feet northwest of Upper Roadstown Road, thence southwest along a line that is parallel to and 200 feet northwest of Upper Roadstown Road to Ye Greate Street (County route 623), thence west a perpendicular distance of 200 feet, thence south along a line that is parallel to and 200 feet west of Ye Greate Street (County route 623) to a point that is a perpendicular distance of 200 feet north of Mill Street, thence west along a line that is parallel to and 200 feet north of Mill Street a distance of 300 feet, thence south along a line that is perpendicular to Mill Street to a point that is a perpendicular distance of 200 feet south of Mill Street, thence east along a line that is parallel to and 200 feet south of Mill Street to a point that is 200 feet west of Ye Greate Street (County route 623), thence south along a line that is parallel to and 200 feet west of Ye Greate Street (County route 623) to a point that is a perpendicular distance of 200 feet west of the point on Ye Greate Street (County route 623) that is 1,200 feet south of its intersection with Springtown Road (County route 620), and thence east to Ye Greate Street (County route 623).

## **3. Springtown coastal hamlet**

a. The coastal hamlet boundary circumscribes an area that extends a perpendicular distance of 300 feet on each side of Roadstown Greenwich Road (County route 620) between a point on Roadstown Greenwich Road (County route 620) that is 1,200 feet south of its intersection with Sheppards Hill Road (County route 650) and a point on Roadstown Greenwich Road (County route 620) that is 1,200 feet north of its intersection with Sheppards Hill Road (County route 650); and another area that



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extends a perpendicular distance of 300 feet on each side of Sheppards Hill Road (County route 650) between a point on Sheppards Hill Road (County route 650) that is 1,200 feet west of its intersection with Roadstown Greenwich Road (County route 620) and a point on Sheppards Hill Road (County route 650) that is 1,200 feet east of its intersection with Roadstown Greenwich Road (County route 620).

#### **D. Hopewell and Stow Creek Townships coastal centers**

##### **1. Roadstown coastal hamlet**

a. The coastal hamlet boundary extends from a point that is a perpendicular distance of 300 feet west of Roadstown-Greenwich Road (State route 620) at its intersection with Hospital Road (County route 703), thence east a perpendicular distance from Roadstown-Greenwich Road (State route 620) to a point that is 300 feet east of Roadstown-Greenwich Road (State route 620), thence north along a line that is parallel to and 300 feet east of Roadstown-Greenwich Road (State route 620) to a point that is a perpendicular distance of 300 feet south of Roadstown-Jericho Road (State route 626), thence east along a line that is parallel to and 300 feet south of Roadstown-Jericho Road (State route 626) to a point that is a perpendicular distance of 300 feet south of the intersection of Roadstown-Jericho Road (State route 626) and Bowentown Road, thence north along a straight line to Roadstown-Jericho Road (State route 626), thence west on Roadstown-Jericho Road (State route 626) to a point that is 600 feet west of its intersection with Roadstown-Greenwich Road (State route 620), thence south a perpendicular distance of 300 feet, thence east along a line that is parallel to and 300 feet south of Roadstown-Jericho Road (State route 626) to a point that is a perpendicular distance of 300 feet west of Roadstown-Greenwich Road (State route 620), and thence south along a line that is parallel to and 300 feet west of Roadstown-Greenwich Road (State route 620) to a point that is a perpendicular distance of 300 feet west of Roadstown-Greenwich Road (State route 620) at its intersection with Hospital Road (County route 703).

#### **E. Lawrence Township coastal centers**

##### **1. Cedarville coastal village**

a. The coastal village boundary extends from the intersection of Main Street (County route 553) and Sawmill Road, thence northeast on Sawmill Road to the former Central Railroad of New Jersey right of way, thence northwest along the railroad right of way to North Avenue, thence southwest on North Avenue to a point that is a perpendicular distance of 500 feet northeast of Main Street (County route 553), thence northwest along a line that is parallel to and 500 feet north of Main Street (County route 553) to a point that is a perpendicular distance of 500 feet northeast of the intersection of Main Street (County route 553) and County route 652, thence southwest along a line to a point that is a perpendicular distance of 500 feet southwest of the intersection of Main Street (County route 553) and County route 652, thence southeast along a line that is parallel to and 500 feet southwest of Main Street (County route 553) to a point that is a perpendicular distance of 500 feet west of the intersection of Main Street (County route 553) and Franklin Street, thence south along a line that is parallel to and 500 feet west of Franklin Street to Maple Avenue, thence south along a line to a point that is a perpendicular distance of 500

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feet south of Maple Avenue, thence east along a line that is parallel to and 500 feet south of Maple Avenue to a point that is a perpendicular distance of 500 feet southwest of Main Street (County route 553), thence southeast along a line that is parallel to and 500 feet southwest of Main Street (County route 553) to a point that is 500 feet west of Main Street (County route 553) at its intersection with Sawmill Road, and thence northeast to the intersection of Main Street (County route 553) and Sawmill Road.

## **V. Ocean County coastal centers**

### **A. Barnegat coastal town**

1. The coastal town boundary extends from the intersection of Atlantic Avenue and Main Street (US route 9), thence north on Main Street (US route 9) to Brook Street, thence east on Brook Street to School Street, thence north on School Street to Bay Avenue, thence east on Bay Avenue to Water Street, thence north and northwest on Water Street to Main Street (US route 9), thence northeast on Main Street (US route 9) to Rose Hill Road, thence northwest on Rose Hill Road to Barnegat Boulevard, thence southwest on Barnegat Boulevard to Bay Avenue, thence east on Bay Avenue to Gunning River Road, thence south on Gunning River Road to Atlantic Avenue, and thence southeast on Atlantic Avenue to Main Street (US route 9).

### **B. Beachwood Borough coastal town**

1. The coastal town boundary extends from a point on the Beachwood Borough/South Toms River municipal boundary that is a perpendicular distance of 125 feet north of Atlantic City Boulevard, thence southeast along a line that is parallel to and 125 feet north of Atlantic City Boulevard to the Pine Beach Borough/Beachwood Borough municipal boundary, thence southwest along the Pine Beach Borough/Beachwood Borough municipal boundary, which becomes the Berkeley Township/Beachwood Borough municipal boundary, to Pinewald Road, thence north on Pinewald Road to Hickory Street, thence northwest on Hickory Street to the Garden State Parkway, and thence north on the Garden State Parkway to Chestnut Street, thence southeast on Chestnut Street to Surf Avenue, thence northeast on Surf Avenue to Admiral Avenue, thence northeast on Admiral Avenue to Central Way, thence northwest on Central Way to the Beachwood Borough/South Toms River municipal boundary, and thence northeast along the Beachwood Borough/South Toms River municipal boundary to a point that is a perpendicular distance of 125 feet north of Atlantic City Boulevard.

### **C. Brick Township coastal town**

1. The boundary for the southern part of the coastal town extends from the intersection of State route 70 and Cedar Bridge Avenue, thence southeast on Cedar Bridge Avenue to Brick Boulevard, thence north on Brick Boulevard to State route 70, thence northeast on State route 70 to Jack Martin Boulevard, thence northwest on Jack Martin Boulevard to State route 88, thence south a perpendicular distance of 200 feet, thence east along a line that is parallel to and 200 feet south of State route 88 to West Princeton Avenue, thence southeast on West Princeton Avenue to a point that is a perpendicular distance of 600 feet north of State route 70, thence southwest along a line that is parallel to and 600 feet north of State route 70 to a point that is a perpendicular

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distance of 1,300 feet northeast of Chambers Bridge Road, thence northwest along a line that is parallel to and 1,300 feet northeast of Chambers Bridge Road to the Brick Township/Lakewood Township municipal boundary, thence west and south along the municipal boundary to a point that is a perpendicular distance of 450 feet north of Cedar Bridge Avenue, thence east along a straight line to a point on State route 70 that is 900 feet northeast of Cedar Bridge Avenue, and thence southwest on State route 70 to Cedar Bridge Avenue; and

2. The boundary for the northern part of the coastal town extends from the north end of Hendrickson Avenue, thence southeast along a line that is parallel to Pello Road to State route 70, thence northeast on State route 70 to a point that is a perpendicular distance of 100 feet west of Morris Avenue, thence north along a line that is parallel to and 100 feet west of Morris Avenue to the end of Morris Avenue, thence west along a straight line to the intersection of Hayes Avenue and Sweeney Avenue, thence southwest on Sweeney Avenue to its end, thence southeast along a line perpendicular to Sweeney Avenue to a point that is on an imaginary line extending northeast from, and on the same bearing as, Hendrickson Avenue, and thence southwest to the north end of Hendrickson Avenue.

#### **D. Dover Township coastal centers**

##### **1. Toms River coastal regional center**

a. The coastal regional center boundary extends from intersection of the former Central Railroad of New Jersey railroad right of way and the Manchester Township/Dover Township municipal boundary, thence east along the railroad right of way to the Dover Township/Berkeley Township municipal boundary, thence southeast along the municipal boundary to Main Street, thence east along the north bank of the Toms River to the Island Heights Borough municipal boundary, thence north, east, south and east along the municipal boundary to the mean high water line of Barnegat Bay, thence north and east along the mean high water line of Barnegat Bay to Adams Avenue, thence west on Adams Avenue to a point that is a perpendicular distance of 500 feet from Fischer Boulevard, thence northwest along a line parallel to and 500 feet east of Fischer Boulevard to a point 1,000 feet southeast of Hooper Avenue, thence northeast along a line that is parallel to and 1,000 feet southeast of Hooper Avenue to the Dover Township/Brick Township municipal boundary, thence west along the municipal boundary to a point that is a perpendicular distance of 1,000 feet west of Hooper Avenue, thence southeast along a line that is parallel to and 1,000 feet from Hooper Avenue to Bay Avenue, thence northwest on Bay Avenue to Bay Lea Road (County route 571), thence west on Bay Lea Road (County route 571) to Old Freehold Road (County route 623), thence north on Old Freehold Road (County route 623) to Intermediate West Way, thence west on Intermediate West Way to Indian Head Road, thence west on Indian Head Road to a point that is a perpendicular distance of 1,200 feet east of US route 9, thence north along a line that is parallel to and 1,200 feet east of US route 9 to a point that is a perpendicular distance of 2,000 feet west of Vermont Avenue at its intersection with the Lakewood Township/Dover Township boundary, thence east along that perpendicular line to the intersection of Vermont Avenue and the Lakewood

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Township/Dover Township boundary, thence northwest along the municipal boundary to a point that is a perpendicular distance of 1,000 feet northwest of State route 70, thence southwest along a line that is parallel to and 1,000 feet from State route 70 to Dover Pines Avenue, thence south on Dover Pines Avenue to State route 70, thence northeast on State route 70 to Whitesville Road, thence southeast on Whitesville Road to Cox Cro Road, thence southeast on Cox Cro Road to a point that is a perpendicular distance of 750 feet west of US route 9, thence south along a line that is parallel to and 750 feet west of US route 9 to Indian Head Road, thence west on Indian Head Road to Whitesville Road, thence southeast on Whitesville Road to the Garden State Parkway, thence south on the Garden State Parkway to a point that is a perpendicular distance of 600 feet north of State route 37, thence west along a line that is parallel to and 600 feet from State route 37 to Shady Nook Drive, thence south on Shady Nook Drive to a point that is a perpendicular distance of 300 feet north of State route 37, thence west along a line that is parallel to and 300 feet from State route 37 to Cardinal Drive, thence north on Cardinal Drive to Oak Ridge Parkway, thence north on Oak Ridge Parkway to the mean high water line of the Toms River, thence northwest along the mean high water line of the Toms River to the Dover Township/Manchester Township municipal boundary, thence southwest along the municipal boundary to State route 37, thence northwest on State route 37 to a point 2,500 feet west of the municipal boundary, thence southwest along a line perpendicular to State route 37 to the former Central Railroad of New Jersey railroad right of way, and thence southeast along the railroad right of way to the municipal boundary.

## **E. Eagleswood Township coastal centers**

### **1. Staffordville coastal hamlet**

a. The coastal hamlet boundary extends from the intersection of the Stafford Township/Eagleswood Township boundary and the former Central Railroad of New Jersey right-of-way, thence southwest along the railroad right of way a distance of 3,000 feet, thence southeast along a line perpendicular to the railroad right of way to US route 9, thence southeast a perpendicular distance of 500 feet, thence northeast along a line parallel to and 500 feet northwest of US route 9 to Cemetery Road, thence northwest on Cemetery Road to Cedar Lane, thence west on Cedar Lane to the municipal boundary, and thence southeast along the municipal boundary to the former Central Railroad of New Jersey right-of-way.

### **2. West Creek coastal village**

a. The coastal village boundary extends from a point at the intersection of US route 9 and the municipal boundary of Eagleswood Township and Little Egg Harbor Township southeast along the boundary to a point 1,000 feet east of US route 9, thence northeast along a line that is parallel to and 1,000 feet east of US route 9 to Bay Road (County route 602), thence west on Bay Road (County route 602) to US route 9, thence northeast on US route 9 to a point that is a perpendicular distance of 500 feet north of Silver Lake Drive (Mill Street), thence west along a line that is parallel to and 500 feet north of Silver Lake Drive (Mill Street) to Thomas Avenue, thence southeast on Thomas Avenue to Railroad Avenue (Prospect Avenue), thence

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southwest on Railroad Avenue (Prospect Avenue) to its intersection with the Eagleswood Township municipal boundary with Little Egg Harbor Township, thence southeast along the municipal boundary to its intersection with US route 9.

#### **F. Island Heights coastal town**

1. The coastal town boundary extends from the intersection of State route 37 and West End Avenue, thence south on West End Avenue to River Avenue, thence south and east on River Avenue to Simpson Avenue, thence north on Simpson Avenue to Ocean Avenue, thence east on Ocean Avenue to Camp Meeting Avenue, thence south and east on Camp Meeting Avenue to Highland Bend, thence north on Highland Bend to Ocean Avenue, thence east on Ocean Avenue to East End Avenue, thence north on East End Avenue to Vansant Avenue, thence east on Vansant Avenue to Bay Avenue, thence north on Bay Avenue to Thomas Avenue, thence west on Thomas Avenue to East End Avenue, thence north on East End Avenue to Lake Avenue, thence west on Lake Avenue to Central Avenue, thence north on Central Avenue to Garden Avenue, thence east on Garden Avenue to the municipal boundary, and thence north along the municipal boundary to State route 37, and thence west on State route 37 to West End Avenue.

#### **G. Lacey coastal town**

1. The coastal town boundary extends from a point on the Garden State Parkway that is due west of the intersection of Llewellyn Road and Hastings Drive, thence east to that intersection, thence east on Hastings Drive to Portsmouth Drive, thence north on Portsmouth Drive to Canterbury Drive, thence south on Canterbury Road to Sheffield Drive, thence south, east and north on Sheffield Drive to Clearview Street, thence east on Clearview Street to Olds Street, thence south on Olds Street to Kennebec Road, thence south on Kennebec Road to Taylor Lane, thence east on Taylor Lane to the railroad right of way, thence south along the railroad right of way to Old Shore Road, thence due west to a point that is a perpendicular distance of 2,000 feet west of US route 9 (Main Street), thence south along a line that is parallel to and 2,000 feet west of US route 9 (Main Street) to the perimeter road north of the Oyster Creek nuclear power plant, thence west along that perimeter road to a point that is a perpendicular distance of 4,000 feet west of US route 9 (Main Street), thence south along a line that is parallel to and 4,000 feet west of US route 9 (Main Street) to the mean high water line on the north bank of Oyster Creek, thence east along the mean high water line to a point that is a perpendicular distance of 4,000 feet east of US route 9 (Main Street), thence north along a line that is parallel to and 4,000 feet east of US route 9 (Main Street) to the mean high water line on the south bank of the South Branch of the Forked River, thence west along the mean high water line to a point that is a perpendicular distance of 500 feet east of US route 9 (Main Street), thence north along a line that is parallel to and 500 feet east of US route 9 (Main Street) to the mean high water line on the north bank of the Middle Branch of the Forked River, thence east along the mean high water line to the eastern end of the peninsula, thence northeast across the North Branch of the Forked River to the mean high water line on the north bank of the North Branch of the Forked River, thence east along the mean high water line to the upper wetlands boundary, thence north along the upper wetlands boundary to the south bank of Bridge Creek, thence northwest along the mean high water line to a point that is a perpendicular distance of 500 feet east of US route 9 (Main

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Street), thence north along a line that is parallel to and 500 feet east of US route 9 (Main Street) to the mean high water line on the south bank of Cedar Creek, thence west along a straight line to a point on the Garden State Parkway that is a perpendicular distance of 6,000 feet north of Lacey Road, and thence south on the Garden State Parkway to a point that is due west of the intersection of Llewellyn Road and Hastings Drive.

#### **H. Lakehurst coastal town**

1. The coastal town boundary extends from the intersection of the Conrail railroad right of way with State route 70, thence east on State route 70 to Brown Avenue, and thence west on Brown Avenue to the Conrail railroad right of way.

#### **I. Lakewood coastal regional center**

1. The coastal regional center boundary extends from the intersection of the Conrail railroad right of way and County Line Road (County route 526), thence east on County Line Road to Brook Road, thence south on Brook Road to Ridge Avenue, thence southwest on Ridge Avenue to Somerset Avenue, thence south on Somerset Avenue to Bergen Avenue, thence west on Bergen Avenue to Linden Avenue, thence south on Linden Avenue to Ocean Avenue (State route 88), thence east on Ocean Avenue (State route 88) to Chambers Bridge Road (County route 549), thence south on Chambers Bridge Road to the Garden State Parkway, thence south on the Garden State Parkway to State route 70, thence west on State route 70 to the Lakewood-Dover Township boundary line, thence northwest along the Lakewood-Dover Township boundary line to the Lakewood-Jackson Township boundary line, thence north along the Lakewood-Jackson Township boundary line to the Conrail railroad right of way, and thence northeast along the Conrail railroad right of way to County Line Road.

#### **J. Ocean Township coastal centers**

##### **1. Waretown coastal village**

a. The coastal village boundary extends from the intersection of US route 9 and Main Street, thence northeast on Main Street to Old Main Shore Road (County route 613), thence north on Old Main Shore Road (County route 613) to US route 9, thence west a perpendicular distance of 500 feet, thence south along a line that is parallel to and 500 feet west of US route 9 to a point that is a perpendicular distance of 500 feet north of County route 532, thence west along a line that is parallel to and 500 feet north of County route 532 a distance of 1,500 feet, thence south along a line that is perpendicular to County route 532 to a point that is a perpendicular distance of 500 feet south of County route 532, thence east along a line that is parallel to and 500 feet south of County route 532 to US route 9, and thence south on US route 9 to Main Street.

#### **K. Ocean Gate coastal village**

1. The coastal village boundary follows the Ocean Gate Borough municipal boundary.

#### **L. Pine Beach coastal town**

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1. The coastal town boundary follows the Pine Beach Borough municipal boundary, but does not include the area north of the right of way of Riverside Drive.

**M. Point Pleasant Beach coastal town**

1. The coastal town boundary follows the municipal boundary of Point Pleasant Beach Borough, but does not include Gull Island.

**N. Point Pleasant Borough coastal town**

1. The coastal town boundary follows the municipal boundary of Point Pleasant Borough.

**O. Stafford Township coastal centers**

**1. Bonnet Island coastal hamlet**

a. The coastal hamlet boundary circumscribes that part of Bonnet Island, which lies between Cedar Bonnet Island and the Borough of Ship Bottom, that lies south of a line that is parallel to and 500 feet north of the westbound lane of State route 72.

**2. Mayetta coastal hamlet**

a. The coastal hamlet boundary circumscribes an area that extends a perpendicular distance of 700 feet on either side of US route 9 between a point on US route 9 that is 1,000 feet south of the intersection of US route 9 and Lamson Road and a point on US route 9 that is 1,000 feet north of the intersection of US route 9 and Lamson Road.

**VI. Salem County coastal centers**

**A. Elsinboro Township coastal centers**

**1. Oakwood Beach coastal village**

a. The coastal hamlet boundary extends from the intersection of Locust Avenue and Fort Elfsborg-Salem Road (County route 625), thence northeast on Fort Elfsborg-Salem Road (County route 625) to Sinnicksons Landing Road, thence northwest on Sinnicksons Landing Road to Schrier Road, thence west on Schrier Road to Slade Avenue, thence south on Slade Avenue to Country Club Road, thence northwest on Country Club Road to Locust Avenue, and thence southwest and southeast on Locust Avenue to Fort Elfsborg-Salem Road (County route 625).

**2. Sinnickson's Landing coastal village**

a. The coastal hamlet boundary extends from the intersection of Sinnickson's Landing Road and Tilbury Road (County route 661) thence east on Tilbury Road (County route 661) to Friendship Drive, thence north and west on Friendship Drive to Sinnickson's Landing Road, thence southwest on Sinnickson's Landing Road to a point that is west of, and on the same bearing as, Garden Drive, thence east along that bearing to Garden Drive, and thence east on Garden Drive to Tilbury Road.

**B. Lower Alloways Creek Township coastal centers**

**1. Canton coastal village**

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a. The coastal hamlet boundary circumscribes an area that extends a perpendicular distance of 200 feet west of Harmersville-Canton Road (County route 623) between Silver Lake Road and Long Bridge Road.

## **2. Hancocks Bridge coastal village**

a. The coastal village boundary extends from the intersection of Front Street and Locust Island Road (County route 658), thence southeast on Locust Island Road to Alloway Creek Neck Road, thence southwest on Alloway Creek Neck Road to Buttonwood Avenue, thence north on Buttonwood Avenue to Powell Street, thence north on Powell Street to Main Street, thence north on Main Street to Front Street, and thence northeast on Front Street to Locust Island Road (County route 658).

## **3. Harmersville coastal village**

a. The coastal hamlet boundary extends from the intersection of Hancocks Bridgarmersville Road (County route 658) and Harmersvillanton Road (County route 623), thence north on Harmersvillanton Road (County route 623) a distance of 1,500 feet, thence west along a straight line to the intersection of Cuff Road and of Hancocks Bridgarmersville Road (County route 658), thence southwest a perpendicular distance of 200 feet from Hancocks Bridgarmersville Road (County route 658), thence southeast along a line that is parallel to and 200 feet southeast of Hancocks Bridgarmersville Road (County route 658) to a point that is a perpendicular distance of 200 feet west of Harmersvillanton Road (County route 623), thence south a distance of 1,500 feet along a line that is parallel to and 200 feet west of Harmersvillanton Road (County route 623), thence east along a perpendicular line to Harmersvillanton Road (County route 623), and thence north on Harmersvillanton Road (County route 623) to Hancocks Bridgarmersville Road (County route 658).

## **C. Mannington coastal hamlet**

1. The coastal hamlet boundary circumscribes an area that extends a perpendicular distance of 700 feet west of State route 45 between Newell Street and Old Kings Highway (Hillside Avenue).

## **D. Quinton coastal village**

1. The coastal village boundary extends from the intersection of State route 49 and the mean high water line on the south bank of Alloways Creek (watercourse), thence south on State route 49 to Sickler Street, thence southwest on Sickler Street to New Street, thence northwest on New Street to its end, thence northwest along the same bearing to the mean high water line on the south bank of Alloways Creek (watercourse), and thence east along the mean high water line to State route 49.

# **APPENDIX 3 BOUNDARIES OF COASTAL CENTERS IN THE CAFRA AREA LOCATED ON BARRIER ISLANDS, OCEANFRONT SPITS, OR PENINSULAS**



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For purposes of N.J.A.C. 7:7E-5 and 5B, this appendix sets forth the boundaries of coastal centers in the CAFRA area on barrier islands, oceanfront spits, or peninsulas. The boundaries of all other coastal centers are set forth in Appendix 2.

In accordance with N.J.A.C. 7:7E-5.3(c), the impervious cover allowed on a site within a Department-delineated coastal center must be placed on the net land area of the site, as determined under N.J.A.C. 7:7E-5.3(d). The placement of impervious cover on a site in a coastal center may be further restricted by other provisions of this chapter, including the Special Area rules at N.J.A.C. 7:7E-3.

The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the coastal centers are listed alphabetically.

## **I. Atlantic County coastal centers on barrier islands, spits, and peninsulas**

### **A. Brigantine coastal town**

1. The coastal town boundary follows the municipal boundary of the City of Brigantine, but does not include any bay islands or the Absecon Wildlife Management Area.

## **II. Cape May County coastal centers on barrier islands, spits and peninsulas**

### **A. Lower Township coastal centers**

#### **1. Diamond Beach coastal town**

a. The coastal town boundary extends from the intersection of the Wildwood Crest/Lower Township municipal boundary and Park Boulevard thence southwest on Park Boulevard to North Station Avenue, thence southeast on North Station Avenue to Ocean Drive (County route 621), thence southwest on Ocean Drive (County route 621) to Madison Avenue, thence southeast on Madison Avenue to its end, thence southeast on the same bearing to the water's edge, thence northeast along the water's edge to the municipal boundary, and thence northwest along the municipal boundary to Park Boulevard.

### **B. Ocean City coastal regional center**

1. The coastal regional center boundary follows the municipal boundary of Ocean City, but does not include any bay islands or Corson's Inlet State Park.

### **C. Sea Isle City coastal town**

1. The coastal town boundary follows the municipal boundary of Sea Isle City, but does not include the area north of a line that extends along 22nd Street and along the same bearing from either end of 22nd Street to the mean high water line.

## **III. Monmouth County coastal centers on barrier islands, spits and peninsulas**

### **A. Monmouth Beach coastal town**

1. The coastal town boundary follows the municipal boundary of the Borough of Monmouth Beach, but does not include any bay islands.

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**B. Sea Bright coastal town**

1. The coastal town boundary follows the municipal boundary of the Borough of Sea Bright, but does not include any bay islands.

**IV. Ocean County coastal centers on barrier islands, spits and peninsulas**

**A. Barnegat Light coastal village**

1. The coastal village boundary follows the municipal boundary of Barnegat Light Borough, but does not include any bay islands or Barnegat Light State Park.

**B. Bay Head coastal town**

1. The coastal town boundary follows the municipal boundary of Bay Head Borough.

**C. Beach Haven Borough coastal town**

1. The coastal town boundary follows the municipal boundary of Beach Haven Borough, but does not include any bay islands.

**D. Berkeley Township coastal town**

1. The coastal town boundary circumscribes that part of Berkeley Township that is east of Barnegat Bay, north of Island Beach State Park and south of Seaside Park Borough.

**E. Brick Township coastal centers**

**1. South Mantoloking coastal village**

a. The coastal village boundary circumscribes that part of Brick Township that is east of Barnegat Bay, north of Dover Township, and south of Mantoloking Borough, but does not include any bay islands.

**F. Dover Township coastal centers**

**1. Normandy Beach/Chadwick coastal town**

a. The coastal town boundary circumscribes that part of Dover Township that is east of Barnegat Bay, north of Lavallette Borough and south of Brick Township, but does not include any bay islands.

**2. Ortley Beach coastal town**

a. The coastal town boundary circumscribes that part of Dover Township that is east of Barnegat Bay, north of Seaside Heights Borough, and south of Lavallette Borough, but does not include any bay islands.

**G. Harvey Cedars coastal town**

1. The coastal town boundary follows the municipal boundary of Harvey Cedars Borough, but does not include any bay islands.

**H. Lavallette coastal town**

1. The coastal town boundary follows the municipal boundary of Lavallette Borough, but does not include any bay islands.

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**I. Long Beach coastal town**

1. The coastal town boundary circumscribes those non-contiguous parts of Long Beach Township that are east of Barnegat Bay, but does not include any bay islands or the Holgate Unit of the Edwin B. Forsythe National Wildlife Refuge.

**J. Mantoloking coastal village**

1. The coastal town boundary follows the municipal boundary of Mantoloking Borough, but does not include any bay islands.

**K. Seaside Heights coastal town**

1. The coastal town boundary follows the municipal boundary of Seaside Heights Borough, but does not include any bay islands.

**L. Seaside Park coastal town**

1. The coastal town boundary follows the municipal boundary of Seaside Park Borough, but does not include any bay islands.

**M. Ship Bottom coastal town**

1. The coastal town boundary follows the municipal boundary of Ship Bottom Borough, but does not include any bay islands.

**N. Surf City coastal village**

1. The coastal village boundary follows the municipal boundary of Surf City, but does not include any bay islands.

**APPENDIX 4**

**CAFRA CENTERS, CAFRA Cores and CAFRA Nodes**

This non-regulatory appendix contains the list of CAFRA centers, CAFRA cores and CAFRA nodes the boundaries of which have been accepted by the Department under N.J.A.C. 7:7E-5B.3(b), and which are incorporated into and shown on the CAFRA Planning Map. As required under N.J.A.C. 7:7E-5B.4(b), an applicant shall refer to the CAFRA Planning Map in order to determine the location of a site for the purposes of determining the applicable impervious cover limits under this chapter.

The Department will update the list of CAFRA centers, CAFRA cores and CAFRA nodes in this Appendix by notice of administrative change as part of the New Jersey Register notice required in N.J.A.C. 7:7E-5B.3(b). The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the CAFRA centers, CAFRA cores and CAFRA nodes are listed alphabetically.

**I. Atlantic County CAFRA centers**

**A. Atlantic City**

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1. Atlantic City CAFRA urban center

**B. Galloway Township CAFRA centers and CAFRA cores**

1. Galloway Downtown CAFRA core
2. Oceanville CAFRA village
3. Smithville CAFRA core
4. Smithville CAFRA town
5. Wrangleboro CAFRA town

**II. Cape May County CAFRA centers**

**A. Avalon Borough**

1. Avalon Borough CAFRA town

**B. Cape May City**

1. Cape May City CAFRA town

**C. Cape May Point Borough**

1. Cape May Point CAFRA village

**D. Stone Harbor Borough**

1. Stone Harbor Borough CAFRA town

**E. Wildwood City/North Wildwood City/Wildwood Crest Borough/West Wildwood Borough**

1. The Wildwoods CAFRA regional center

**III. Cumberland County CAFRA centers**

**A. Bridgeton City**

1. Bridgeton CAFRA regional center

**B. Commercial Township CAFRA centers**

1. Laurel Lake CAFRA village
2. Mauricetown-Haleyville CAFRA village
3. Port Norris CAFRA village

**C. Maurice River Township**

1. Delmont CAFRA village
2. Dorchester-Leesburg CAFRA village
3. Heislerville CAFRA village
4. Port Elizabeth Bricksboro CAFRA village
5. Mauricetown Station CAFRA hamlet

**D. Millville City/Vineland City**

1. Millville-Vineland CAFRA regional center

Effective February 3, 2003

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**IV. Monmouth County CAFRA centers**

**A. Atlantic Highlands Borough**

1. Atlantic Highlands Borough CAFRA town

**B. Long Branch City**

1. Long Branch CAFRA regional center

**C. Manasquan Borough**

1. Manasquan Borough CAFRA town

**D. Red Bank Borough**

1. Red Bank CAFRA regional center

**V. Ocean County CAFRA centers**

**A. Little Egg Harbor Township**

1. Mystic Island CAFRA town
2. Parkertown CAFRA village

**B. Little Egg Harbor Township/Tuckerton Borough**

1. Tuckerton CAFRA town

**C. Stafford Township**

1. Stafford/Manahawkin CAFRA regional center

**VI. Salem County CAFRA centers and CAFRA nodes**

**A. Lower Alloways Township CAFRA centers**

1. PSE&G Energy Facility node

**B. Salem City**

1. Salem City CAFRA regional center